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THE COMPOSITION OF LEGISLATION

LEGISLATIVE FORMS AND PRECEDENTS

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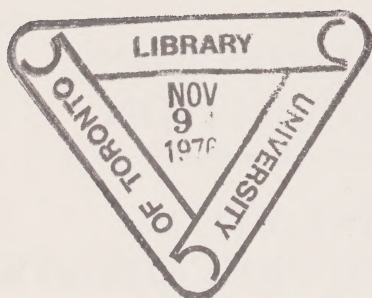
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FOREWORD

It is a distinct personal pleasure for me to have this opportunity to offer a few remarks about the author and the subject-matter of this publication, since neither is a stranger to me. In learning my own skills as a legislative draftsman, I was very much a student of Professor Driedger, indeed, the first to become engaged on a full-time basis in legislative drafting under his tutorship. Since those days, it has been my fortune to follow closely in his footsteps, first as Chief Legislative Counsel to the Government of Canada and, more recently, in the office that I now occupy.

I think it is fair to say that Professor Driedger was the person primarily responsible for first developing standards of professionalism within the Government of Canada for the art of legislative drafting. He became in 1944 the first head of the newly-established Legislation Section of the Department of Justice with the title of Parliamentary Counsel, and in addition to working on the daily drafting requirements of the Government, proceeded to assemble the tools and develop the techniques for teaching the art to others.

Between 1948 and 1955, Professor Driedger published a series of monographs on the principles and techniques of legislative drafting and in 1956 completed his major treatise on the subject, *The Composition of Legislation*. This work, the first full-length text on legislative drafting to be published in Canada, quickly became a standard guide for draftsmen not only in this country but abroad.

The Composition of Legislation was followed in 1963 by Professor Driedger's valuable collection of drafting illustrations under the title of *Legislative Forms and Precedents*.

There is, quite clearly, a growing interest in the development of legislative drafting skills, and a growing appreciation of the importance of those skills, in almost every country of the world. Professor Driedger has, under the auspices of the Department of Justice, established for legislative draftsmen a training program at the University of Ottawa where he continues to impart his special knowledge and skills to students from Canada and other Commonwealth countries. In this regard, Professor Driedger has been consulted by a number of Commonwealth countries planning to establish legislative drafting training facilities of their own. His writings, including both *The Composition of Legislation* and *Legislative Forms and Precedents*, are cited regularly by other authors, within and outside Canada, writing on the subject of legislative and legal drafting. Unfortunately the latter two books are now out of print.

Foreword

It is, therefore, a happy circumstance that Professor Driedger has undertaken to prepare for publication, under the auspices of the Department of Justice, a new edition of these two books that, in this edition, are brought together in a single volume. I know many students of drafting will welcome this new publication, especially since it includes much new material and since the original texts have been extensively revised and updated to reflect new insights gained by Professor Driedger through the formal teaching of the subject in the classroom.

Professor Driedger's book, of course, deals with the preparation of legislation in the English language. In time, I hope this volume may be followed by another work dealing with the experience in Canada of preparing legislation in both the official languages of a federation that embodies as well two of the principal legal systems of the world.

D.S. Thorson, Q.C.
Deputy Minister of Justice and
Deputy Attorney General of Canada.

Ottawa, Canada.
September 1975.

BOOK ONE

**THE COMPOSITION
OF LEGISLATION**



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FOREWORD TO THE FIRST EDITION

This work does not purport to be a treatise on how to draft statutes. The art of composing legislation can be learned only through practical experience; there is no substitute. All that I can claim for this work is that it is a record of some of my experiences in the field of legislation, an account of some of the things I do and some of the things I do not do, according to my own notions of what is good or right and what is not, arranged and explained in such a way that it will, I hope, be of some value to others.

Many of the examples given in the text have been invented for the occasion; others have been taken from the statutes and mutilated to fit the text; others are as they were found. They are intended to illustrate the point under discussion and are not necessarily to be taken as examples of good drafting or of good law.

Brief reference is made in the text to some principles applied by the courts in the construction of statutes. Discussion of these principles is outside the scope of this work. They are mentioned here only to remind draftsmen that they exist and cannot be ignored.¹

Some of the material included in this work has been published before. Portions of three articles I previously published in the *Canadian Bar Review* (*Legislative Drafting*, (1949) C.B.R. 291, and *The Preparation of Legislation*, (1953) C.B.R. 33) have been incorporated throughout with the kind permission of the *Canadian Bar Review*; and Chapter XI includes an abbreviated version of an essay on the *Retrospective Operation of Statutes* that was included in a volume of *Legal Essays in Honour of Arthur Moxon*, published by the University of Toronto Press in 1952, and is here reproduced in part with the kind permission of the University of Toronto Press and the editors of that volume.

I have included in the Appendix George Coode's admirable treatise on *Legislative Expression*, written in 1842. Most draftsmen are familiar with it, particularly with the terms he used to describe what he regarded as the elements of a legislative sentence. Further reference to Coode's treatise is made in the text.

OTTAWA, December 1, 1956.

E.A.D.

1. Those who wish to pursue this aspect of legislation in greater depth are referred to Driedger, E.A., *Construction of Statutes*. Butterworths, Toronto. 1974.

BOOK ONE

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PREFACE

THE DRAFTING PROCESS

The Policy

A statute is the formal expression of a legislative policy, and it follows that before a statute can be drafted the policy sought to be implemented by it must be determined. The first stage in the preparation of a bill, therefore, is the formation of the legislative policy. Under a parliamentary system of government, legislative policy is settled and determined in the first instance by the government and finally by Parliament; but legislative policy does not necessarily originate with the government.

In many cases the policy embodied in a bill is formulated by the government. For example, a political party seeking office may include in its election programme an undertaking to pass certain laws and, should it be successful at the polls, it may proceed to implement its announced programme by introducing appropriate legislation.

Legislative policy may originate with the public service. Nearly every department of government administers statutes and the need for amendments is frequently seen first by departmental officials. It may be that a statute has become obsolete or unworkable, or that defects are discovered, and the officials will then recommend that appropriate amendments be made. The government itself, of course, decides whether or not the amendment should be made and what its scope should be.

Finally, the government frequently works out its legislative policy with the advice and assistance of the public service, parliamentary committees or royal commissions. The government may refer a problem or a proposed policy to them for consideration and recommendation and, on the basis of the reports it receives, formulate the policy.

It is not the function of a draftsman either to originate or determine legislative policy. But the dividing line between policy and law, between form and substance, is not a sharp one and the draftsman cannot escape being involved in policy discussions. Although the draftsman is not responsible for policy, he must nevertheless consider whether the prescribed policy is capable of implementation. Not all social ills can be cured by legislation, and he must critically examine the policy he has been asked to express in legislative language, not as a draftsman, but as a lawyer.

The draftsman also makes a contribution in rounding out the policy and filling in the details. Legislative proposals usually come in the form of broad

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statements, leaving a multitude of minor details still to be worked out. Many of these details occur to the draftsman when he first examines his instructions, but there are always additional policy matters that cannot be known or foreseen until the drafting process is well under way. He will undoubtedly raise questions of legal policy. Administrative officials rarely give much thought to the purely legal aspects of legislation and it is usually left to the draftsman to indicate what sanctions and other legal provisions are necessary to ensure that the legislation will be effective.

The draftsman must consider a statute in its relation to other statutes and the law generally; he regards a statute as one fragment of a much greater whole, and any new law must of course be in harmony with existing law. In order to maintain this harmony, a draftsman may well suggest a modification of the prescribed policy, or an amendment of another statute.

Then the draftsman, because of his experience with all departments of government, can frequently recognize that departments other than the sponsoring departments are interested in a legislative proposal. The policy of a measure is not necessarily confined to the activities of one department, but a particular department may not always recognize that the measure affects the policy of others. A draftsman frequently brings officials from various departments together and the initial decisions may be altered as a result.

Preparatory Work

Adequate instructions for legislation cannot be given before the main lines of the legislative policy have been drawn. A draftsman must receive a reasonably complete proposal before he can start his work, and the sponsors must therefore first settle the policy they want implemented. For example, where an existing statute is to be revised, the sponsors must first go through the whole statute, consider and discuss their problems and make their policy decisions. The draftsman probably does not participate in these preliminary discussions, but when it becomes apparent that legislation is required, discussions with him will perhaps take place. When the proposals affect two or more departments of government it is usual to establish an inter-departmental committee to discuss the problems involved and to work out the policy.

Difficulties arise when instructions are given to the draftsman before the sponsors have sufficiently prepared themselves; instead of beginning to draft the measure, the draftsman is obliged to pilot the sponsors through their policy discussions. A more serious consequence is that policy decisions at such a late stage in the drafting process, because they are hastily made, are not likely to survive, with the result that fundamental changes will be made during the course of drafting and the draftsman will be obliged to alter his bill over and over again. Sometimes a draftsman is asked to prepare alternative drafts or to prepare a draft in order to elicit major policy decisions. Alternative drafts can be prepared if the alternative policies are clearly laid down, but the draftsman would prefer to have the policy decisions first. Where he is requested to prepare a draft for the purpose of eliciting policy

PREFACE

decisions, his work is multiplied because he is forced to guess at what the ultimate policy will be, and his guesses are not likely to be right.

Not until the preliminary policy work has been done is the sponsoring department in a position to give instructions to the draftsman. But the drafting cannot always start even then. Before he can begin to put words on paper, the draftsman must understand the legislative proposal. He must, therefore, familiarize himself with the subject-matter of the proposed legislation, with the legislative problems and the proposed solutions. As a first step, he will usually hold a series of conferences with the sponsors; these conferences may last for a day or two, or for several weeks, depending upon the nature of the subject-matter. A draftsman cannot, of course, become an expert in every field of knowledge, but he must be brought to the point where he is qualified to deal with the subject-matter from a legislative point of view. In addition, he must, as a preliminary step, do whatever legal research is necessary; he must ascertain the existing laws on the subject and, particularly, the statute laws of his jurisdiction.

Legislative Plan

The next step is the preparation of the necessary legislative plan. Legislative policy is not the same thing as the legislative plan; the former is the objective to be achieved, and the latter an outline of the method by which it is to be achieved. For example, the policy may be that certain grants are to be paid to a class of persons under specified conditions. In order to give effect to such a policy the draftsman knows that his statute must, among other things, describe the persons who are to benefit, specify the amount of the grant and the conditions under which it may be paid, and provide authority for payment out of the Consolidated Revenue Fund, for suspension for breach of the conditions and for recovery of unauthorized payments, for applications, decisions and awards, for penalties for misrepresentation or other wrongful conduct. In the case of an amending statute the draftsman must decide what statutes should be amended, what sections, and in what manner. After the legislative plan is prepared, it is discussed with the sponsors and it will undoubtedly be modified; new provisions will be added and others will be dropped or changed.

Drafting

The draftsman has now reached the point where he can begin to draft the bill. Working by himself, he prepares a first draft of the proposed bill or, in the case of a lengthy or complicated bill, a first draft of a portion of it. He cannot work with other people looking over his shoulder and offering comments. And no satisfactory draft can be prepared by a group of draftsmen acting as a drafting committee; they will all have different ideas about how the work should be done, there will be endless discussions over trivialities, and the final product will be at best only a compromise. Drafts can be discussed, criticized and tested in a discussion group, but the responsibility for

THE COMPOSITION OF LEGISLATION

setting up the draft or making any changes must devolve upon one person. Usually the draftsman goes over this first draft and prepares one or more revisions before discussing it with the sponsors. When the revision is submitted to the sponsors for consideration and comment, and after they have had an opportunity of considering and discussing it, a further conference with the draftsman takes place. All the defects and imperfections of the first draft, so far as they can be seen, are discussed, and a fresh draft is prepared and submitted. The process continues until the sponsors and the draftsman are both satisfied with the form and content. At this stage the officials of the sponsoring department will probably discuss the draft measure with their Deputy Minister and Minister, whose examination and consideration of the draft may result in further alterations.

Time Involved

Most of the time involved in preparing a measure is consumed by the sponsors and not by the draftsman. As an illustration of the time involved in the foregoing account of the drafting process I have selected a short, normal bill that I once prepared. The sponsoring department, when it first became aware of the problem, established a small committee to consider the matter and make a report. The committee completed its assignment in three months, and the departmental heads considered the report for two months before a decision was taken to promote a bill. After the policy was approved by the Cabinet, instructions were given, and the drafting proceeded as follows:

Conference with draftsman.....	1 day
Preparation of preliminary draft.....	1 day
Consideration of preliminary draft by departmental officials	4 days
Further conference with draftsman	½ day
Preparation of second draft.....	½ day
Consideration of second draft by departmental officials.....	12 days
Further conference with draftsman	1 day
Preparation of third draft	1 day
Consideration of third draft by departmental officials.....	10 days
Preparation of final draft for printer.....	2 days
Submission to printer and printing of draft.....	3 days
Total time.....	<u>36 days</u>

Thus, a total of 36 days elapsed between the date of instructions and receipt of the printed bill. But of these 36 days, only 7 days were taken by the draftsman; and those days were not spent exclusively on this one item. Daily routine matters must be dealt with; while a draft of one bill is being typed, the draftsman can turn to another.

In the foregoing illustration the department had done its work before coming to the draftsman, but that is not always so. Frequently instructions are given before the department is ready, and, of course, more time is needed to finish the bill.

PREFACE

Many demands made upon draftsmen are impossible to fulfil. I recall one outstanding case where a department not only insisted that a major bill be drafted in three weeks, but actually gave public assurance that it would be. When instructions were given it was at once evident that the department was hopelessly unprepared; many major questions of policy had not been decided or even considered, and many difficult problems involved in the legislative scheme had not been discovered. The bill required the full-time attention of an experienced draftsman for eighteen months! Even if the department had been fully prepared, it would have taken from six to twelve months to prepare the bill.

It may be supposed from my description that the drafting of legislation is a leisurely process, but unfortunately it is not. Rarely is a bill prepared under ideal conditions; usually the work must be done in a hurry and under pressure. One of the main reasons is that few people realize how much is involved in the preparation of legislation, with the result that insufficient time is allowed. On the other side of the scale is the fact that most draftsmen are inclined to be perfectionists and, if they had their way throughout, a bill would never be finished. A draftsman cannot pick up a bill without making some change, particularly after having put it aside for a while, and he is always loath to let a bill go for fear he has committed some glaring blunder. But legislation has to be passed and it has to be drafted, and the time comes when a draftsman must put an end to his labours and produce a bill. Draftsmen must be practical and for each bill find a place somewhere between the two extremes of the slipshod and the perfect, but there is for each bill an irreducible period for preparation. Suppose, for example, that it would take one month to prepare a particular bill in the normal course. This period could be reduced, without sacrificing quality, by according the bill top priority and by working at it evenings and weekends, which might bring the preparation period down to, say, three weeks. But the time cannot then be further reduced without sacrificing quality; as the time is cut down, the quality deteriorates, so that ultimately the point is reached where no bill fit for introduction can be produced.

Form of Instructions

A draftsman does not like to receive his instructions in the form of a draft bill; he prefers them in the form of a plain statement of what is intended, supplemented by oral discussion. If he receives a draft, he must construe and interpret what may be an imperfect statement, and he may misunderstand what is intended. A draftsman who is presented with a draft measure would not be discharging his duties if he assumed that a proper legislative plan had been conceived and that proper provisions had been chosen to carry it out; he cannot be expected to confine himself merely to a superficial examination of the outward form of the measure. The drafting of legislation does not consist in polishing what others have written.

THE COMPOSITION OF LEGISLATION

As a rule no time is saved by preparing a draft bill for submission to the draftsman. When this is done the sponsors often expect that a final draft will be returned the same day or, at the latest, the following day, which is usually the deadline day. Even assuming that a perfect bill is submitted to the draftsman, he must still subject it to the complete drafting process, for how else can he discover that it is a perfect bill and satisfy himself that it will give legislative effect to the intended policy? Draft measures prepared by inexperienced persons are usually defective, and then the draftsman must spend much time in undoing what has been done. This is particularly awkward where the draft has been circulated and discussed before submission to the draftsman, because those who have seen it expect that the final draft will closely resemble it and will resist any attempt to alter its fundamental structure.

General

The quality of a bill depends in large measure upon the competence of the draftsman. But his task is, in a sense, impossible of fulfilment. The perfect bill has never been written, and never will be. The most a draftsman can do is try to reduce doubt, ambiguity and foreseeable problems to a workable minimum, and his success will depend upon the extent to which he has done so. He must produce not only one bill, but many bills, in a few weeks or months; he must for each bill create a sound, workable legislative scheme, anticipating and providing for all the problems and situations that are likely to arise; he must express that scheme in clear and unequivocal language; he must ensure that the bill will carry into the law precisely what the sponsors intend. But once the measure becomes law, anyone can attack it at his leisure. In a lawsuit, counsel for the opposing parties may submit the statute, or the smallest portion of it, to microscopic examination for months or even years; they may argue about it for days before a judge; and the judge has the advantage of both sides of the argument in coming to his own conclusion. Whatever the result, in the long run the draftsman is bound to come out second-best.

If the foregoing has left the impression that the draftsman has the last word on the form and content of an Act, I hasten to correct it. He has only put on paper what some one else desires. The Minister in charge, or the Cabinet, may say that the bill does not do what it is supposed to do, or that they have changed their minds and want something else. And the draftsman then amends or re-drafts. When finally the government is content with the measure it goes to Parliament. It is now the property of Parliament, and Parliament will decide for itself whether the bill should be accepted, rejected or changed. The most that the original draftsman can do is to assist Parliament in preparing amendments, if he is asked to do so. It is, of course, dangerous to make amendments without some opportunity for reflection; at first glance an amendment may appear to be sound but on reflection will turn out to conflict with some other provision of the bill or with an existing statute.

PREFACE

LEGISLATIVE PROGRAMME

Under a parliamentary system of government, the legislative programme for each session is submitted to Parliament by the government. And the official draftsman is generally charged with the responsibility of preparing the programme that the government desires for a particular session. The draftsman must therefore organize his work so that he can produce the maximum number of bills in the minimum time, and will have ready for the government the particular bills it desires for a particular session. In addition, to ensure maximum efficiency, there should be an established procedure for the preparation of a particular legislative programme.

In organizing his work, a draftsman must realize that it is not good enough to take one bill at a time. He, and each member of his staff, must work on many bills at the same time. First he must classify his bills according to urgency, length and difficulty. The urgent bills must have priority, and they should be spread around the staff, so that, if possible, one urgent bill does not delay another. The long bills, especially revision and consolidation bills, should also be evenly distributed. A draftsman can take one or two major bills, and still have time to handle many smaller items, but if he has any more major bills, he will be lost so far as other work is concerned. Major bills take an enormous amount of time; from 200 to 400 hours of personal attention by a draftsman is not unusual for an average long bill, and to that must be added the time taken by departmental officials to consider drafts and problems. Bills other than the long, difficult or urgent, can be fitted in between.

In distributing bills for drafting regard should be had to experience and knowledge. A man who has prepared a major bill in one year would naturally be able to do a later amendment in less time than a stranger to the bill. But care should be taken that specialization is not carried too far. A competent draftsman should be able to do any bill and he should receive general experience.

Each draftsman must arrange his work so that many bills can be worked on simultaneously. While he is holding a conference on one bill, a first draft of another bill can be typed, and other departments can be considering preliminary drafts of their bills.

A legislative programme cannot, however, be efficiently prepared if instructions do not come in, nor if instructions for the urgent or difficult bills are late. In order to ensure maximum efficiency, there should be a legislative system designed to obtain instructions in good time. Each jurisdiction doubtless has its own system, and each no doubt its merits and its faults.

The objective of a system is to ensure that the drafting process, instead of being confined to a short period during a parliamentary session, is extended over the whole year. This gives more time for the determination of policies and the preparation of measures, eases the burden on all officials, and provides a reasonable opportunity for discussion and reflection. Moreover, if the preparation of legislation is delayed until the session has begun, there will be

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a lack of legislative material at the beginning of the session and congestion at the end; many bills would fall by the wayside because there is not enough time either to prepare them or to deal with them in Parliament afterwards. The preparation of foreseeable legislation should be started before the session begins.

It is highly desirable that there should be one central authority for the preparation of legislation. If each department were left to prepare its own legislation, there would inevitably be a lack of uniformity and consistency among measures, some bills intended for the same session would probably conflict, and there might well be conflict between bills and existing statute law; moreover, each department could not expect to be equipped with trained and experienced draftsmen.

The preparation of legislation should be controlled by a committee of the Cabinet. Its functions should be to prepare, for Cabinet consideration and approval, the government's legislative programme for each session, to keep the legislative programme under constant review and to examine in detail all draft bills.

Under the Canadian federal system a sponsoring department or agency of the government must prepare and submit to the Cabinet a memorandum setting forth the objectives of the proposed legislation and the main questions of policy involved. In preparing the memorandum the sponsoring department is required to consult other departments that might be interested. When submitting the proposal to the Cabinet it must indicate the probable length of the bill, its degree of urgency and the session of Parliament in which it is intended to introduce it. Explanatory memoranda must not be submitted to the Cabinet unless the sponsoring department is in a position to give complete instructions for the drafting of the required bill immediately Cabinet approval has been received. They must not be in the form of draft bills, but must provide a brief and clear outline of the substantive amendments or new proposals recommended; and they must contain an account of the views and comments, if any, of the other interested departments.

The principal reason why an explanatory memorandum must be submitted before a bill is drafted is to prevent departments from employing counsel to draft bills that have little chance of being accepted by the government. Without this requirement draftsmen would be required to spend a great deal of time, and to incur considerable expense, in futile drafting; they are better employed to draft bills the government wants. The purpose of the memorandum is therefore to obtain advance approval from the Cabinet of the broad principles of the proposed measure. The memorandum is not intended to be a substitute for the bill, and approval of the memorandum does not imply approval of the bill. The draft bill will come forward later and it can then be examined by the Cabinet in detail.

When the Cabinet approves the principle of the proposed measure, the sponsoring department is notified, and it is required to give detailed drafting

PREFACE

instructions for the preparation of the required bill. The drafting process following receipt of instructions has been described already. When the draft of the bill is completed, it is printed and submitted to the Cabinet Committee on Legislation in the first instance and finally to the Cabinet as a whole. If Cabinet consideration of the bill results in changes the bill is referred back to the draftsman for amendment or re-drafting. When the bill is approved by Cabinet it is sent to the Clerk of the Senate or to the Clerk of the House of Commons, as the case may be, for introduction. A bill imposing taxes or a charge on the Consolidated Revenue Fund must in the first instance be introduced in the House of Commons. Other bills are first introduced either in the House of Commons or in the Senate as the Cabinet decides in each case.

UNDERSTANDING STATUTES

Every draftsman has, no doubt, been asked why statutes are written so that no one can understand them — or why statutes cannot be written in plain words so that everybody can understand them. I am not prepared to admit that statutes are as bad as many people think they are.

Statutes are laws. They are supposed to settle the rights and liabilities of the people, and they are enforced by the courts. They must be, so far as we can make them, precise. They are serious documents. They are not, like the morning newspaper, to be read today and forgotten tomorrow. Like all other serious works of literature, they must be read and studied with care and concentration. Every word in a statute is intended to have a definite purpose and no unnecessary words are intentionally used. All the provisions in it are intended to constitute a unified whole. It represents many long hours of hard work. Only fifteen minutes may be required to read the words in it, but that is not enough. Anyone who wishes to understand a statute must be willing to spend a little time with it, reading it through, slowly and carefully, from beginning to end, and then re-reading it several times. Of course, the ordinary reader will not be able to grasp its full implications and he will have difficulty in applying the statute to an actual case. But that situation he must accept. Statutes cannot be so written that no dispute or difficulty in construction could ever arise.

A reader who has no knowledge of the subject-matter of a statute cannot be expected to understand it; nor can a draftsman be expected to write it so that he will. Could a person who knows nothing about banking, bills, cheques or promissory notes understand the *Bills of Exchange Act*? Some statutes are, indeed, frightfully complicated, but it is not the draftsman who made them so. Laws must sometimes be enacted to deal with very complex situations, and obviously no one can understand the statute unless he understands those situations.

The *Income Tax Act*, for example, is undoubtedly complicated, but the reason is that modern business methods are complicated. Most people cannot make any sense out of the provisions dealing with undistributed income of corporations, interlocking directorates, related companies, and so on. Nor

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would the man on the street be able to understand the annual financial statement of a modern railway company. But the corporations concerned — or at least their directors and officials — know what these provisions in the *Income Tax Act* are about. The ordinary salaried man need not be too much concerned. Those provisions do not affect him. Two or three other sections tell him what tax he must pay and he won't have much trouble in finding out what they mean; and he should be glad that the provisions for the big fellows are complicated — otherwise, they would pay less tax and the rates would have to go up.

It is not fair to condemn statute law as a whole on the basis of an amending statute. An amendment may well be unintelligible when read out of its context, and he who would understand it must be prepared to read the whole statute first and then fit the amendment into it. If he is not willing to go to that trouble he has no cause for complaint.

The writers of statutes must share the blame along with the reader. There are indeed badly written statutes, but they are probably better now than they were a hundred or even fifty years ago. There has been improvement, but there is room for more.

So far as style is concerned, I am not convinced that statutes must necessarily be inelegant. They can be grammatically perfect, they can be orderly and logical and they need not bristle with legalese, clichés and jargon. A draftsman should not, of course, indulge in unnecessary variation or inversion, in circumlocution or pedantry; and he must use the same words or phrases over and over again if he means the same thing, even to the point of monotony. Nevertheless, statutes can be made respectably elegant.

ADDENDUM TO SECOND EDITION

The will of the lawmaker is expressed in language by means of a written instrument, consisting of words joined together in such a way as to communicate ideas. The basic unit of language is the sentence. A written composition is therefore a collection of sentences. A sentence is a complete and independent thought, and while an *idea* is expressed by a sentence, a collection of many sentences may be needed to express a complete law. Sentences, therefore, are the unit blocks with which the written law is constructed.

The *ingredients* of a legislative sentence are:

1. A description of a person or thing, being the subject of the law; the answer to *who*.
2. A statement of the law; the answer to *what*.
3. Where required, a fact-situation — i.e. a statement of the circumstances in which the law operates; the answer to *when*.

The *grammatical elements* of a legislative sentence are the same as in sentences in all other literary compositions. They are:

1. A subject.

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2. A predicate.
3. Where required, modifiers of the subject and predicate in the form of adjectives, adverbs, phrases or clauses.
4. Particles (conjunctions and prepositions), which bind the elements together.

The *structure* of a legislative sentence also is the same as in sentences in all other literary compositions. They are:

1. One or more main or co-ordinate clauses.
2. Where required one or more dependent or subordinate clauses.

Sentences may be simple, compound, complex or compound-complex. A simple sentence has but one clause; a compound sentence in reality consists of two or more co-ordinate clauses, but they are joined by a conjunction and the whole punctuated as a single sentence; a complex sentence has one main clause and one or more subordinate clauses; a compound-complex sentence contains two or more main clauses and at least one subordinate clause. And any clause in a sentence can have more than one subject and more than one predicate.

There are three basic steps in the drafting process:

1. Determining the ingredients.
2. Creating the elements.
3. Assembling and arranging the elements to construct the sentence.

The first of these steps is the conception of the law to be expressed. This is perhaps the most important step in the whole drafting process, for if there is no idea there is nothing to express; and if the law as conceived is faulty or defective the law as expressed will also be so. Determination of the policy of the law — i.e. the social or political objective to be achieved by the law — is primarily the function of the policy-makers, although a draftsman can and often does play an important part in policy formation. The conception of the rules of law, or legal enactments, however, that are required to transform policy into law is primarily the function of the draftsman. And a draftsman's ability to conceive the law needed to give effect to a prescribed policy depends on his native talents and on his training and experience as a lawyer and a draftsman.

The second and third steps in the drafting process are not peculiar to legislative drafting. They are required in all writing, and a draftsman's ability to write laws depends largely on his command of language, his education and experience and his native talents. Good legislative drafting requires the application of the basic standards and principles of grammar and composition.

A sentence can be divided into two parts: 1. The grammatical subject plus its modifiers, and 2. The grammatical predicate plus its modifiers. The

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subject of the law is contained within the grammatical subject, the statement of the law is contained within the grammatical predicate, and the fact-situation is contained within the modifiers of the subject and predicate. The same ideas can be expressed in many different ways. All of the grammatical elements can be changed in form and position, and yet will express the same or substantially the same ideas. Thus, phrases can be converted to clauses, and vice versa; and modifiers in the predicate can be converted to modifiers in the subject, and vice versa. The art of legislative drafting is the ability to visualize the many different grammatical forms and methods that can be used to convey ideas, to select those that best express them and then, by a process of conversion of modifiers from one form to another and from one position to another, to arrange the *elements* of the sentence so as to communicate the legal *ingredients* clearly and precisely. It is for this reason that this book is structured on a grammatical foundation.

To illustrate this process let us take the bare essentials of a provision that might be found in a licensing statute; a provision that an applicant for a licence must first pass a qualifying test and then upon payment of a fee the Minister will grant him a licence.

1.

Where an applicant has passed the test, if he pays the fee, the Minister shall grant him a licence.

The fact-situation is set out in two clauses modifying the predicate.

2.

Where an applicant pays the fee, if he has passed the test, the Minister shall grant him a licence.

The same as 1, except that the modifying clauses are reversed.

3.

Where an applicant has passed the test and paid the fee the Minister shall grant him a licence.

Here there is one adverbial clause with two predicates.

4.

The Minister shall grant a licence to an applicant if he has passed the test and paid the fee.

The same as 3 but expressed as a condition.

5.

Where an applicant who has passed the test pays the fee the Minister shall grant him a licence.

The fact-situation has been converted in part to an adjectival clause modifying the subject in a subordinate adverbial clause.

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6.

Where an applicant who has paid the fee has passed the test the Minister shall grant him a licence.

A reversal of 5.

7.

The Minister shall grant a licence to an applicant who has passed the test if he pays the fee.

Here the subject of the adjectival clause with its modifier has been made the object of a preposition in a modifier of the principal predicate.

8.

The Minister shall grant a licence to an applicant who pays the fee if he has passed the test.

A reversal of 7.

9.

The Minister shall grant a licence to an applicant who has passed the test and (has) paid the fee.

The adverbial clause in 7 is converted to a predicate in an adjectival clause.

In all of the foregoing examples the law has been expressed as a duty of the Minister; the subject being *Minister* and the predicate *shall grant*. The same law could be expressed as a right of the applicant thus:

An applicant who has passed the test and paid the fee is entitled to be granted a licence.

This form can also be changed in the same way as the other, and thus we have at least nine more ways of saying the same thing.

Many other forms can be found. Phrases could be substituted for either one or both of the two clauses.

An applicant having passed the test

An applicant having paid the fee

If we go through the nine steps above for each of the two forms, first with one phrase, then the other and then the two of them (inserting an additional verb or other word here and there) we get fifty-four more sentences.

We could also substitute adjectives for a phrase or clause. Thus, an applicant who has passed the test could be called a "successful" applicant, and that gives us seventy-two more.

There is virtually no limit to the number of ways in which an idea can be expressed. Some forms are of course more exact than others; some are better English; some forms may fit the over-all scheme or arrangement of the Act better. A good draftsman must be ingenious, nimble-minded and inventive. When he has conceived the law to be expressed, a tentative form and arrangement of sentence elements must spring to his mind; he writes them

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down and then re-arranges and converts his elements until he has found the most accurate and comprehensible expression of the law.

It will be seen that the fact-situation is not to be found in any particular or special place in the sentence; it may be scattered throughout the modifiers in the whole sentence. The following examples show how the fact-situation can be moved from place to place.

1.

An inspector may enter any place in which he reasonably believes there are products to which this Act applies.

The fact-situation is that the inspector has a reasonable belief that certain products may be found in a certain place. In 1 it is set out as an adjectival clause modifying the object of the predicate.

2.

An inspector may enter any place if he reasonably believes that products to which this Act applies may be found therein.

In 2 the same fact-situation is set out as an adverbial clause modifying the predicate.

3.

An inspector who reasonably believes that products to which this Act applies may be found in any place may enter that place.

In 3 the fact-situation is set out in the subject description. The form is a relative clause modifying the subject.

4.

An inspector who reasonably believes that products to which this Act applies may be found in any place may enter that place if he furnishes to the person in charge thereof a certificate of his appointment.

In 4 we have an additional fact element, and it is added in the form of an adverbial clause modifying the predicate. The whole fact-situation is thus set out partly in the subject and partly in the predicate. This additional element could be inserted in each of the foregoing examples. Thus, in 1 the same *if* clause could be added at the end. In 2 it could be added by substituting *and* for *if*. In 3 it could be made part of the subject description by inserting before *may enter* the clause *and (who) produces*, etc.

In writing a sentence one must begin with the bare subject and predicate. There might be two or more of each, cumulative or alternative, and a decision will have to be taken at some point whether there should be two or more separate sentences. Once the subject and predicate have been chosen, the complete fact-situation essential to the law must be conceived; appropriate grammatical elements to express them must be formulated; the elements must then be suitably arranged; and in formulating and arranging them a draftsman must have the freedom of the artist, unshackled by any artificial "drafting" rules or forms.

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Although the conception of the ideas to be expressed is probably the most important and difficult phase of the drafting process, the expression of the fact-situation is the most important and difficult phase of the writing process. On these two phases depends the quality of the written law. Well done, the law will be clear and exact and readily comprehensible. Poorly done, the law will be defective — ambiguous, obscure, unworkable, long-winded or incomprehensible.

OTTAWA, July 1, 1974

E.A.D.

BOOK ONE

THE COMPOSITION OF LEGISLATION

CHAPTER I

INTRODUCTORY

The preparation of legislation involves three fundamental steps: first, the formulation or determination of the legislative policy; secondly, the creation of the legislative scheme, that is to say, the conception of the specific ideas or rules to be expressed; and thirdly, the composition of the sentences that will express those ideas or rules.

The first two of these steps have been mentioned in the preface, but they are outside the scope of this work. The formulation of the legislative policy is a matter for persons other than the draftsman, although, as has been indicated, he does participate in the process. The creation of the legislative scheme, on the other hand, is almost exclusively the function of the draftsman.

Before a draftsman can write a sentence he must know what he wants to say; and to find out what he wants to say is his most important and difficult problem. No one is going to tell him how many sentences there should be or what each should say. The legislative purpose of the statute is dictated by the policy instructions, but the specific ideas or rules to be expressed must, for the most part, come from the draftsman's own mind, and for his inspirations he must draw on his own mental capacity, on his own talents, ingenuity, training, education and experience. A good draftsman is more than a mechanical word polisher; he is one of the creative participants in the legislative process. Indeed, the hardest part of the draftsman's task in *producing* a bill is finished before the *drafting* of it begins.

Although the writing of the words of a statute is but one facet of a difficult and involved process, it is, nevertheless, of the utmost importance, for however good a legislative scheme may be, it will fail of its purpose if it is badly expressed. And it is with the principles of verbal expression that this work is primarily concerned.

Statutes, regulations, ordinances and other expressions of law, like all other literary works, consist of sentences. A legislative sentence is a grammatical sentence and must be composed according to the ordinary rules of grammar and composition. There is no special language for statutes. A legislative sentence has a subject and a predicate and each may be modified by other words or groups of words. In discussing the elements of a legislative sentence, the terminology devised by George Coode, which is no doubt well known to most draftsmen, will be modified somewhat. He says that

The expression of every law essentially consists of,

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—1st, the description of *the legal Subject*;

—2dly, the enunciation of *the legal Action*.

To these, when the law is not of universal application, are to be added,

—3dly, the description of *the Case* to which the legal action is confined; and,

—4thly, *the Conditions* on performance of which the legal action operates.

As applied to sentences, Coode's analysis is not complete and it has, unfortunately, led to a number of misconceptions concerning the composition of a sentence in a legislative enactment. Coode says that the purpose of all law is to secure some benefit to some person, either by conferring a right, privilege or power or by imposing an obligation, and he designates the person on whom the right, privilege or power is conferred, or on whom the obligation is imposed, as the *legal subject*. This designation has prompted some persons to insist that the grammatical subject in every legislative sentence must be a person. There are, however, many proper sentences in statutes where the grammatical subject is not a legal person, or where the person upon whom a right is conferred is not the grammatical subject, as the following examples show:

This Act may be cited as the *Bankruptcy Act*.

The preamble of every Act shall be deemed a part thereof.

The repeal or amendment of an Act shall not be deemed to be or to involve a declaration as to the previous state of law.

In this Act "regulation" means a regulation made under this Act.

A negotiable bill may be payable either to order or to bearer.

Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

No action shall be brought to recover any sum of money ... secured by an express trust ... except within the time within which it would be recoverable if there were not any such trust.

The costs of administration of this Act shall be paid out of money appropriated by Parliament.

Failure to comply with this section does not invalidate the proceedings.

Coode recognizes sentences of this kind and says that *declaratory enactments, interpretation clauses, and adaptations or extensions of former laws to new purposes, do not always display immediately the purpose of creating or of extending rights, privileges, or powers of persons, or of imposing obligations and liabilities on persons*. But these persons are outside the grammatical sentence and are not grammatical subjects. In discussing legislative sentences, therefore, the grammatical subject, whether person or thing, will be here designated as the *subject* or the *principal subject*. There may, of course, be other subjects in subordinate clauses, but each sentence, whether in a statute or elsewhere, must have at least one principal subject.

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What Coode describes as the *legal action* is, in reality, the principal predicate of the sentence. The word *action* is somewhat misleading because the principal verb does not always require action. The principal predicate will here be designated as the *predicate* or the *principal predicate*. As in the case of subjects, legislative sentences may contain two or more principal predicates and there may be additional predicates in subordinate clauses.

Coode also says that the whole of the enacting verb is always to be an active verb, except only where the legal subject is to submit or suffer; and writers frequently exhort draftsmen to avoid the passive or to prefer the active. Nevertheless, the principal verb is frequently in the passive, as the illustrations given above will indicate. Granted that the persons upon whom rights, privileges or powers are conferred, or the persons upon whom obligations are imposed, must be identifiable, it does not follow that the principal verb in a legislative sentence must be active. If the beneficiaries or victims of the legislation are satisfactorily identified, the form of the verb is immaterial, and frequently it is more difficult to express the desired rule with an active verb. The use of the passive form will be more fully discussed later.

According to Coode, the *case* is a statement of the circumstances in which the law operates, and the *condition* is a statement of something that must be done before the law operates. He recommends that in a legislative enactment the case should be stated first, followed by the condition and then the legal subject and legal action in that order.

Grammatically, there is no distinction between Coode's case and condition. Each is a phrase or a clause modifying the predicate and joined to the other parts of the sentence by a preposition or conjunction. It is frequently impossible to identify a particular phrase or clause as a case or a condition under Coode's definitions.

The order of the elements of a legislative enactment as recommended by Coode is not observed in fact. The position of modifiers cannot be prescribed in the abstract in advance — the order depends entirely on the nature of the sentence and the nature of the modifiers. Frequently, the predicate is modified by a number of clauses and phrases and, in order to make the sentence readable and intelligible, it may be necessary to place some at the beginning, some in the middle and some at the end. Frequently, a number of different conjunctions and prepositions must be used in a single sentence to relate the modifiers to the predicate, and the order will be dictated solely by the content of the sentence.

Both the *case* and the *condition* simply describe the fact-situation in which the law operates. The fact-situation may be past, present or future and may express relations such as reason, time, purpose, condition, result, place, comparison, contrast, manner, restriction, concession or indifference; suitable conjunctions and prepositions are available for these purposes. All these types of clauses and phrases will here be designated as the *fact situation* or the *case*, and the term, accordingly, embraces not only Coode's cases and

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conditions, but all clauses or phrases that modify the principal predicate and express the fact-situation in which the predicate operates.

In its simplest form, a sentence consists of a subject — a word or group of words defining a person or thing about which something is being asserted — and a predicate — a word or group of words asserting something about the described subject. A sentence is made complex by a process of modification. On the subject side, we may have as modifiers, adjectives and adjectival phrases and clauses, and on the predicate side we may have adverbs and adverbial phrases and clauses. The relationship between these modifiers and other parts of a sentence is expressed by prepositions and conjunctions.

A sentence may contain two or more principal subjects and two or more principal predicates. And occasionally we find punctuated as a single sentence two principal subjects each with its own predicate. These compound sentences are, in reality, two or more sentences, although they are punctuated as one.

There is an additional form of modification that is particularly important in legislation, namely, modification by a separate sentence. For example, a section in a statute might require *every person* to do something or to refrain from doing something, but another separate section might state that the statute applies only to certain classes of persons. The section in which the rule of law is found employs a universal description of a subject, but this description is narrowed by another separate sentence.

A legislative sentence, like every other, is built on a foundation of subject and predicate. Each may be modified in many ways, and the subject and predicate, with their modifiers, must be assembled to form the complete sentence. A particular qualification can often be expressed in many different ways. A subject modifier of one kind can be converted into a subject modifier of another, and similarly with predicate modifiers; subject modifiers can be converted to predicate modifiers, and *vice versa*. An accomplished draftsman must be able to express the same qualification in different ways so that he can select the one with precisely the correct shade of meaning, and can smoothly combine all his modifiers so as to produce not only a readable and grammatically correct sentence, but one that expresses a complete, exact and workable law.

In setting up a legislative sentence, it is usually desirable to begin with the bare subject and predicate. There may be two or more subjects, and two or more predicates, either cumulative or in the alternative. By first confining himself to the bare subject and predicate, the draftsman can arrive at a tentative decision whether there should be one or more sentences. Having stated the subject and predicate, he can begin the process of modification. The subject can be described in more detail, the predicate can be qualified, and the complete sentence built up. The modifiers may then have to be re-arranged or adjusted to the sentence; and it may be necessary to alter the form of a modifier. The draftsman can now decide whether the sentence

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should be broken up into two or more subsections, whether it should be written in paragraphs or subparagraphs, how it should be punctuated, and how it should be fitted into the scheme of the statute as a whole. The essential questions to be asked and answered in relation to every sentence are:

1. To whom does the law apply?
2. What is the law?
3. In what circumstances does the law operate?

Not only subjects and predicates are subject to modification. Every substantive may be modified; and substantives include nouns, pronouns, gerunds, phrases and clauses; and every verb may be modified. The more modifiers there are, the more complicated the sentence becomes. Frequently a sentence becomes hopelessly involved because the writer has tried to include all his modifiers in one sentence. Modifiers of substantives and verbs other than subject or predicate are particularly likely to make the sentence complicated; in many cases it is better to write separate sections or subsections.

This work, insofar as it treats of legislative sentences, will deal mainly with subject and predicate modifiers, but the comments offered are, of course, applicable to other modifiers as well.

CHAPTER II

THE VERB IN LEGISLATION

It is appropriate to begin with consideration of the verb and its characteristics. It is probably the most important word in a legislative sentence, for it is this part of speech that expresses the legislative command, prohibition, requirement, power or permission.

VOICE

It is sometimes stated, as a rule of drafting, that the passive should be avoided, or that the active should be preferred. There are many situations where the passive is not only proper, but preferable. Indeed, in many instances there is no practical alternative.

The predicate in a main clause is frequently in the passive.

1. Where the subject is universal.

This Act may be cited as the *Criminal Code*.

2. In describing the operation of a statute.

This Act shall be deemed to have come into force on the 1st day of January, 1955.

3. In a legal fiction.

A licence issued under any enactment repealed by this Act shall be deemed to have been issued under this Act.

4. Where the identification of the subject is unnecessary.

The notice shall be served on the occupant.

5. Where other laws complete the enactment.

The employees necessary for the administration of this Act shall be appointed under the *Public Service Employment Act*.

The expenses of administration shall be paid out of moneys provided by Parliament.

The verbs used in modifying clauses are frequently in the passive.

The widow of every soldier who was killed in the war shall be paid a pension as provided in this Act.

Every person who has been summoned shall appear.

Every person to whom notice has been given.

Notwithstanding that this Act has not been complied with

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The rule, if there is one, is that the subject must be identifiable, if it matters. Frequently it does not, as the foregoing examples indicate, but a subject can be named even if the verb is in the passive.

Notice shall be given by the licensee

MOOD

Verbs in legislation are almost always in indicative form. Although there is a special verb form for the subjunctive mood, in modern English the indicative form is used to express that mood. Thus, *if Parliament be then in session* is now written *is in session*.¹ One exception is *were*.

The imperative mood is never required, since it is always in the second person and legislation is addressed to third persons.

TENSE

Tense of Enacting Verb

Since a statute is always speaking, future tenses should not be used in the enacting, or main, clause in a legislative sentence. Enacting verbs should be in the simple present tense.

Tenses in Fact-Situations

In descriptions of the fact-situation the three forms of the present and past tenses — *simple, perfect and progressive* — are used.

Simple Present

In describing the existence of a state of affairs, or an event concurrent with the enacting verb, the simple present is normally used.

Every person who is a resident of Canada

Every person who resides in Canada

Every person who applies for a licence shall submit evidence that

Present Perfect

Where the action described in a subordinate clause is prior in time to action described elsewhere in the sentence either the present perfect or the simple past is normally used.

If the past event is connected to the present, namely, the time of reading, the present perfect is appropriate.

Where a person has resided in Canada for twenty years he may

A person who has resided in Canada for twenty years may

Simple Past

But if the past event is not connected to the present the simple past or past perfect is used.

1. Cf. George Coode: *Legislative Expression*. Appendix I, *infra* p. 315

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A person who carried on a brokerage business when this Act came into force.

Past Perfect

If the simple past is used, there is no indication whether the action is or is not completed at the time of reading. If the perfect is used, as in

A person who had been carrying on a brokerage business when this Act came into force

the implication is that the action was completed at the time indicated.

Often it makes no difference whether the simple present or present perfect is used.

Every person who has failed to comply with this Act is guilty of an offence.

Every person who fails to comply with this Act is guilty of an offence.

In the former, the perfect tense connects a past occurrence with the present time. The event is past, but the consequences bear on the moment immediately thereafter and are described by the legal predicate *is guilty of an offence*. In the latter, the present tense is regarded as an eternal truth, which may, grammatically, be expressed in the present tense.

Progressive Tense

The progressive tense is peculiar to English. It is formed by adding the present participle to the verb *to be*, and it expresses action in progress at an indicated time.

This tense form developed out of a phrase formed by the old preposition *a* plus a gerund

He is a hunting = He is in the course of hunting

In time the preposition was dropped, and the gerund was thus converted to a participle to form the verb phrase *is hunting*.

The progressive tense is useful in legislation because it incorporates a time element. There must, however, always be another time, expressed or implied, to which this continuous time is related.

Future Tense

Future tenses are occasionally found in subordinate clauses, as in

Where a creditor has reason to believe that his security will be impaired.

LEGISLATIVE AUXILIARIES

The three most common auxiliaries used in legislation to express the will of the legislature are *shall*, *must* and *may*. Although they are at times interchangeable they do have different meanings and functions.

Positive Forms

Every one shall

This form is used to require something to be done; it creates a universal duty.

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Every one must

This form is also used to require something to be done. Strictly speaking, however, it does not directly create a duty; it merely asserts the existence of a duty, however it may have been created. Thus, anyone can say that all motorists *must* drive on the right, because the legislature has said they *shall*. But if the speaker has the power to command, then *must* has the force of a command, but only by inference. Hence, in directing commands to persons *shall* is better. *Must* may appropriately be used where it is not intended that a breach of the injunction should result in penal consequences (*The Members of the Board must be appointed by the Minister*), or where the “command” is directed to things rather than persons (*The agreement must contain*).

Every one may

This is a grant of permission, power or right. However, it is not complete in itself for it assumes that there is lack of permission, power or right. Thus, if one provision prohibits a course of conduct, then an exception can be made by granting permission with *may*; there might be a provision that a corporation *may* do what it otherwise has no power to do; and there might be a provision that an inspector *may* enter premises and seize goods or do some other act that would otherwise be unlawful.

There is an inherent ambiguity in the word *may*. It also means *is likely to*, and sometimes it is not clear which meaning it is intended to have. Thus, does the expression *regulations that may be made by the Minister* confer power to make the regulations or does it merely refer to regulations that the Minister under some other provision has power to make?

Universality

Where an enactment requires something to be done or grants permission, power or rights, the words usually used to express universality are *every person*, *every one*, *any one*, with a singular verb, or *all persons* with a plural verb.

Sometimes the indefinite article is used, particularly where a limited class of persons is referred to — *a railway company*, *a physician*. Grammatically the indefinite article does not necessarily express universality. In ordinary speech *a person* might refer to one person only. However, if an enactment is regarded as being addressed to each member of the community individually (as it must be) then the indefinite article has universal effect. As a general rule, however, it is preferable to use a suitable pronoun of totality.

Negative Forms

The situation is different where an enactment is the opposite of a requirement or grant, namely, a prohibition or denial.

A sentence may be given an exact opposite meaning by negating either the subject or the verb (or predicative); if both are negated the meaning is unchanged. Thus the opposite of *All men are mortal* is either *No man is mortal* (where *no man* is the negative of *all men*) or *All men are immortal* (where

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immortal is the negative of *mortal*). And *No man is immortal* is the equivalent of *All men are mortal*.

Many words can be negated by adding a prefix, but where that cannot be done or where there is a phrase the negative *not* must be used. And therein lies a difficulty. *All men are not mortal* is ambiguous, because the word *not* can be construed either as negating mortality, or as negating the universality of *all*. If *not* refers to *all* then the sentence implies that some, but not all, men are mortal.

Hence, we cannot convert *Every one shall (must, may)* to the opposite by negating the verb, as *Every one shall (must, may) not*, because that could be construed as meaning *Not every one shall (must, may)*. We must therefore leave the verb as it is and negative the subject.

The negatives of the provisions of totality *every one*, etc. are *No one*, *nobody*, *none*, *no person*. The opposite of *Every one shall (must, may)* is therefore *No one (no person) shall (must, may)*.

The indefinite article could be used — *A person shall not* — but, as indicated above, this form is not grammatically universal. An unqualified plural noun could be used as in *Corporations shall*, but it would hardly do to commence an enactment with *Persons shall*.

No person shall

This is a universal prohibition, because it is the exact opposite of the universal command *Every person shall*.

No person needs to

If *Every person must* is regarded as a declaration that an obligation exists, however it may have been created, then the opposite is a declaration that the obligation does not exist. But the negative of *must* in this sense is *need not* rather than *must not*. The opposite of *Every person must* could therefore be *Every person needs not to*. This form, however, is ambiguous, but if we now negative both its subject and verb we have the sense wanted — *No person needs to*.

This expression assumes there is an obligation and its function is to remove it. Thus, a particular person or class of persons may be exempted from an obligation to do something by saying they *need not* do it. Exemptions can similarly be made in the case of requirements directed to non-persons.

No person must

If *Every person must* is regarded as a requirement that something be done, i.e. a duty created by implication, then the opposite is a prohibition, which could be expressed by *Every person must not*. But since this expression is ambiguous we can again get the desired sense by negating both its subject and verb — *No person must*.

This expression can be construed as merely a statement that a prohibition exists, but if spoken by the legislature it must be construed as creating

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the prohibition. It is therefore the equivalent of *No person shall*, just as *Every person must*, if spoken by the legislature, is the equivalent of *Every person shall*, but the direct prohibition *No person shall* is to be preferred.

No person may

Since *Every person may* is a universal grant of permission, power or right, the opposite *No person may* is a withdrawal or denial of permission, power or right. This form is apt where the legislature has somewhere granted permission, power or right, and it is now intended to make an exception.

This form is also used as the equivalent of *No person shall*. This use is justifiable, for if persons may not (i.e. are not allowed to) do an act, then the doing of the act is necessarily prohibited by implication.

There are situations where *may* is used when it is not clear whether the legislature has merely made an exception to a grant or has issued an injunction, and there would be doubt whether or not penal consequences follow the doing of what is said not to be permitted. For example, suppose that a statute authorizes an inspector to enter upon private property in order to destroy weeds, and contains a provision that *No inspector may enter upon private property on Sundays* and a penalty provision for violating *this Act*. If an inspector enters on a Sunday, is the remedy civil trespass only, or could he be prosecuted for a violation of the Act? He has not violated a provision of the Act; he has merely exceeded his authority. The worst that could be said of him is that he violated an unwritten injunction of the legislature to be inferred from a denial of permission in the Act; he didn't violate the denial.

If the statute were to say that no inspector *shall* enter there clearly would be an offence. If it said that he may enter on any day except Sundays there clearly would not be an offence.

The forms *No person may* and *A person may not* could also mean that it is likely no person will.

This little word *may* can be very troublesome. It is recommended that the form *No person may* should never be used to create an obligation; the auxiliary should always be *shall*. If *may* is used, it should be very clear that its sole function is to withdraw permission, power or rights granted in the statute or existing apart from the statute.

SHALL AS A NON-OBLIGATORY AUXILIARY

Conditional Clauses

We have considered the auxiliary *shall* as an auxiliary of command, namely, to create an obligation. We find, however, that in legislation *shall* is used in other senses, although less frequently now than formerly.

It was frequently used in conditional clauses, or in clauses expressing the fact-situation, as in

Whenever an accident *shall* happen

If a fire *shall* be caused

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Here, the *shall* is a future auxiliary, and while this style was common in old literature it is now regarded as archaic and has given way to the simple present tense, which is also better modern drafting style.

Divine Ordination

There are also many situations where *shall* is used in an authoritative sense, but not as imposing on any identifiable persons an obligation that can be obeyed or disobeyed. Again, this use was more frequent in earlier legislation than it is in modern legislation. For example

Older forms

shall have a lien
shall be entitled
shall be forfeited
shall be liable
the Act *shall apply*
no action *shall lie*
shall mean

Modern Forms

has a lien
is entitled
is forfeited
is liable
this Act *applies*
no action *lies*
means

In this use *shall* is obligatory in the sense of a divine ordination, and is the equivalent of *Let him (it) be*. When spoken by the supreme legislative body it creates a law. *Fiat lux ergo est lux*. This form can therefore be defended grammatically, but since the law is always speaking, it can also be expressed in the present tense, and more and more that is becoming the modern drafting style.² Another reason for avoiding this future form of *shall* is that there can be doubt in a particular case whether *shall* is intended to create a rule of law or is intended to express obligation.

The Creative *shall*

There are other creative provisions, as in

There *shall be* a corporation

This kind of a provision does not have continuing operation, and the present tense is therefore not suitable. It operates to create something the moment the words are spoken, and its force is then spent. The modern tendency, however, is to employ another expression, as, for example

There is hereby established a corporation

In the form

There *shall be* established

there is doubt whether the auxiliary is intended to be the creative *shall* or a command.

2. And see George Coode: Legislative Expression, Appendix I, *infra* p.315

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Unintended Command

Sometimes *shall* takes the form of a command to a person, when it is not intended that breach of the command should be followed by penal consequences. For example

The Governor in Council *shall* appoint the members.

The intention is not to impose an obligation on the Governor in Council or to punish him for not obeying the statute, but rather to describe what kind a person will satisfy the requirements of the statute. The word *may* could be substituted, but it would be more accurate to say the members *are to be* appointed by the Governor in Council, or to refer to the Board as consisting of so many members *appointed* or *to be appointed* by the Governor in Council. *Must* could be substituted for *shall*; it merely states the existence of an obligation and does not directly impose it.

Permission or Power

Sometimes *shall* is used when it is intended only to confer permission or power; *may* would be better.

The Minister *shall* prescribe the forms

Commands to the Inanimate

Sometimes commands are addressed to inanimate things, as in

The agreement *shall* contain

Here it would be better to say *must*, or to qualify the agreement by a descriptive clause or phrase,

An agreement containing

Another example is

The appellant *shall* file notice of appeal within 30 days

Here, it is not intended to impose an obligation but only to indicate the procedure that must be followed. *Must* would be better, or, alternatively

May appeal by filing a notice of appeal within 30 days

Directory

Particular attention should be paid to the imperative form where a provision is intended to be directory only. To say that an *application shall be signed by the owner* or that an *owner shall sign the application* may not express the exact sense intended; the owner is not being compelled to sign, but his application will not be considered unless he does sign. It would be better to use some other form — to say that the *application must be signed*, or that the application is not valid *unless it is signed*, or that the owner may apply by an application *signed by him*.

Further difficulties arise where the principal verb is *to be*. For example

The Commissioner (to be appointed) *shall be* a resident of Canada.

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Does this merely restrict the choice to a resident, leaving him free to reside where he chooses after he is appointed, or does it require him to remain a resident? If it goes to initial qualification only, it should be

A person is not eligible to be appointed a Commissioner unless he is a resident.

And if he must remain a resident to stay in office, it should be

A person is not eligible to be appointed to or to continue in the office of Commissioner unless he is a resident.

There are doubtless other ways in which the obligatory form could be eliminated.

An additional ambiguity is contained in the following:

The General Manager *shall be* a member of the Board.

This might be construed to mean any of the following:

1. The General Manager must be selected from the Board members — i.e. he is not eligible unless he is a member of the Board.
2. The General Manager need not be selected from the Board members, but once he is appointed he becomes *ex officio* a member of the Board in addition to those who are already there.
3. The General Manager must remain a member of the Board — if he ceases to be a Board member (which he was at the time of his appointment) he automatically ceases to be General Manager.

DOUBLE DUTY VERBS

A verb should not be, at the same time, both active and passive.

Every person who has been summoned and appeared

Every person who has appeared and been served

Or both principal and auxiliary.

Every person who is an inspector and examining a shipment.

PARTICIPLES IN VERB PHRASES

Participles are used in verb phrases and as adjectives. Their use as adjectives is discussed in Chapter III.

There are two single-word participles: the present, or first, formed by adding *-ing* to the stem of the verb, and the past, or second, formed by adding *-ed* to the stem of regular verbs and having a special form in the case of irregular verbs.

The present participle of a verb is used to form its progressive active tense, by adding it to a form of the verb *to be*. To form its passive progressive tense its past participle is added to the present participle of *to be*.

Parliament is (was) sitting

The Bill is (was) being debated

The past participle is used to form all passive tenses by adding it to a form of the verb *to be*.

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It is sometimes impossible to say whether a participle is an adjective or part of a verb phrase.

Thus in

He was employed

it is not clear from those words alone whether there is described the act of employing or the state of employment.

PARTICIPLES AND GERUNDS

Participles and gerunds are both formed from verbs and, unfortunately perhaps, the same word frequently does for both. In legislation, it is important that a word that can be both participle and gerund should be clearly identifiable as one or the other; otherwise, difficulties in interpretation are bound to arise.

A gerund is a noun, and it must therefore have case — nominative, accusative or possessive; a participle used as an adjective must qualify a noun or a noun equivalent. In the sentence

No person shall obstruct a Customs officer examining baggage.

the word *examining*, taken by itself, could be either gerund or participle. If it is participle, the sentence is ambiguous — at least grammatically. It could refer to *person*, and would mean

No person, examining baggage, shall obstruct a Customs officer.

This construction would permit the obstruction of a Customs officer at any time unless the other person is examining baggage. Qualifying *officer*, the sentence is

No person shall obstruct a Customs officer, examining baggage.

Here the words *examining baggage* are only incidental information and they escape the action of the verb; the emphasis is not correct.

On the other hand, if *examining* is a gerund, what is its case? It could only be accusative — the object of *obstruct*. But that would leave *Customs officer* as an indirect object, which is hardly possible grammatically. We would come closer to the proper sense of the sentence if we made it a clear gerund.

No person shall obstruct a Customs officer's examining baggage.

But the Customs officer then escapes the action of the verb, and *obstruct* is hardly the word to use in relation to *examining*. The action of the verb must be brought to bear on both the officer and the examination. But to do so we must change the fundamental structure of the sentence.

No person shall obstruct a Customs officer in examining baggage.

No person shall prevent a Customs officer from examining baggage.

In the above two examples a preposition has been inserted, thus clearly making *examining* a gerund, the object of a preposition, and leaving *officer* as the sole object of the verb. The meaning is clearer.

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No person shall obstruct a Customs officer who is examining baggage.

In the above form there is an adjectival relative clause in which *examining* is a clear participle.

No person shall obstruct a Customs officer while the officer is examining baggage.

And in this form there is an adverbial relative clause where *examining* is again a clear participle.

The master shall report his vessel entering the harbour.

In the above sentence we have the same difficulty, and also the vague feeling that *entering* is intended to qualify *master* so as to indicate the time when the report is to be made. There are three questions to be answered: who is to make the report, what shall it be, and when shall it be made. The sentence given is not a sufficient direction on these points. Nor would be any of the following:

The master shall report the vessel's entering the harbour.

The master shall report the vessel when entering the harbour.

The master when entering the harbour shall report the vessel.

The master shall report that the vessel is entering the harbour.

The master shall report while the vessel is entering the harbour.

What is required is a more elaborate sentence along the following lines:

The master of a vessel shall, while his vessel is entering the harbour, report (to the harbour master) that the vessel is entering the harbour.

The master of a vessel shall, while his vessel is entering the harbour, report that fact to the harbour master.

A word that can be either gerund or participle should be used with caution and should be clearly identifiable as one to the exclusion of the other. Sometimes the context is sufficient, but, if not, the sentence should be changed.

CHAPTER III

THE PRINCIPAL SUBJECT

Laws are rules for the regulation of human affairs and must, therefore, be directed to legal personalities. Although Parliament may be legally omnipotent, it can command or empower only persons to do things or to refrain from doing things. However, as has already been indicated, there are many legislative sentences where the subject is a thing rather than a person. The ultimate effect of these sentences bears on persons, but these persons are not the grammatical subjects of the sentence. Provisions of this kind are often merely ancillary to other provisions where persons are the grammatical subjects, and are, in effect, additional modifiers. For example, a section may require certain persons to execute a particular document, and another separate sentence, in which the document is the grammatical subject, may describe in more detail what the document is to contain.

It is proposed to deal principally with personal subjects. Whatever the law and whatever the form, it is always necessary to have clearly in mind the persons whose rights and duties are affected by that law, and they must be clearly identifiable.

UNIVERSAL DESCRIPTION

Beginning with a universal description, a law could be made applicable to everybody by applying it to *every person*. Other expressions of a universal character may also be employed — *every one*, *all persons*, *each person*, or the negative *no person*. The passive form *it is prohibited* or *it is unlawful* may also be used, although the modern tendency is to adopt a more direct approach. A rule of law beginning *no action shall be brought* would also be universal in its application.

There are instances where a subject is expressed as universal, but is not in fact. Penal laws are usually expressed to apply to *every person* but we know that the universal description is subject to modification. The *Criminal Code* contains special provisions respecting acts committed by children and persons of unsound mind, and these provisions are, in reality, modifiers of the subject in every penal statute.

CLASS DESCRIPTION

The application of laws may be confined by a class description of the subject. The law is expressed to be universal in relation to the described class, but it is not universal in relation to all persons. The following are some examples of class descriptions:

A trustee shall verify the statement.

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The *receiver* may sell.

The *court* may order.

A *judge* may allow.

A *creditor* may claim.

A *bank* may lend.

Two or more classes of persons may be combined as a subject.

The chairman or vice-chairman

The receiver or trustee

A father, son or brother

Every director, officer or employee

Every director or provisional director

Every executor, administrator or liquidator

In some cases, the conjunction joining the different classes could be either *and* or *or*, not because *and* means *or*, but because the same result can be reached by two different paths. In the last example above, if we regard the three classes as a group, the conjunction *and* conveys the sense — all must do or abstain from doing what the statute directs. On the other hand, if we have in mind the individual member of the group, the conjunction *or* can be used — each member of any of the classes must do or abstain from doing what the statute says.

In a negative description, the conjunction *or* is usually the proper one.

No trustee *or* receiver shall

Stated positively, the conjunction *and* is usual.

Every trustee *and* receiver shall

Conjunctions can create ambiguity. In a provision commencing

Every husband and father

are there two subjects, that is to say, husbands and fathers, or is there only one subject, namely a person who is both a husband and a father? This difficulty does not arise where the one person cannot be a member of both classes. In order to avoid ambiguity it might be necessary in a particular case to change the class description to a universal description modified by a relative clause.

Every person who is both a husband and a father

If it is intended that there should be two subjects, a change in conjunction may suffice.

Every husband or father

A further difficulty may arise in some cases with the conjunction *and*; the statute may require two persons to act jointly.

Every husband and wife shall

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If a provision can be construed as requiring joint action, it might be advisable, to avoid ambiguity, to say that *each* shall do what the statute requires or to use other words indicating that joint action is not required; but if joint action is required, doubt can be removed by inserting the word *jointly* or other similar expressions. The nature of the legal requirement may itself resolve the ambiguity — it may be action that clearly does not lend itself either to joint action or individual action, as the case may be.

SUBJECT MODIFIERS

Adjectives

The simplest subject modifier is the adjective. Adjectives may modify either universal descriptions or class descriptions.

Insolvent persons
Interim receiver
Bankrupt corporation
Provisional director
Trading company

A subject may be modified by two or more adjectives.

Charitable and educational institution

There may be an element of uncertainty where two or more adjectives are used. In the foregoing example, is there only one subject, namely, an institution that must be both charitable and educational, or are there two subjects, one a charitable institution and the other an educational institution? The following forms are free from ambiguity:

Charitable institution and educational institution
Charitable or educational institution
An institution that is both charitable and educational

In the last example above, the modifiers have become subjective complements and it is clear that there is only one subject.

In some cases the conjunction can be eliminated.

Charitable fraternal society

In this form the phrase has, in reality, been expressed as one subject *fraternal society* with one modifier *charitable*.

Difficulties may also arise where there are two or more subjects.

Charitable institution or society

In the above example *charitable* may or may not be intended to modify *society*. The doubt is removed by using one of the following forms:

Society or charitable institution
Charitable institution or charitable society

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The chances of ambiguity increase where there are multiple modifiers in addition to multiple subjects.

Every charitable or fraternal institution or society

Every charitable and fraternal institution or society

The foregoing descriptions could include the following subjects:

Society

Charitable institution

Fraternal institution

An institution that is both charitable and fraternal

Charitable society

Fraternal society

A society that is both charitable and fraternal

The safest course is to list all possible subjects, select those that are required and by a proper arrangement of subjects and modifiers, and possibly also the use of relative clauses, include those that are desired without including any that are not. Another remedy, which is discussed in more detail in Chapter VII, is to break up the description into separate divisions.

Every

(a) charitable institution

(b) fraternal institution, or

(c) society

Every charitable and fraternal

(a) institution, or

(b) society

A possible source of ambiguity always exists where two or more modifiers of the same class are used in a sentence, or where there is one modifier and two or more things to which it could relate. The problems outlined above exist also where adverbs are used, or where phrases and clauses are used, whether adjectival or adverbial.

Participles as adjectives

The participle is an adjective derived from a verb, but it is capable of retaining some of the characteristics of a verb. Thus, it may take an object or be itself modified by a verb modifier. The participles that can be used as adjectives are the active present of intransitive verbs,

Trading company

Sailing vessel

and the passive past of transitive verbs,

Authorized trustee

Retired officer

Vested right

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Secured creditor

The active present participle of a transitive verb cannot normally be used as an adjective. The normal position of an adjective is before the noun it modifies; a transitive verb must be completed by an object, and the participle, plus object, cannot be placed before the noun. For example, *a person claiming a right* cannot be written as *a claiming a right person*, although occasionally one finds these expressions in hyphenated form. In some cases, however, the object may be understood, in which case the participle, without the object, may precede the noun. For example, provision might be made in a statute permitting a person to authorize something to be done and he could then, in later sections, be spoken of as *the authorizing person*.

The past participle when used as an adjective normally also precedes the noun it modifies. However, if the participle is qualified in any way the whole phrase must follow the noun. Thus, one can write *convicted person*, but not *of an offence convicted person*. This must be written *person convicted of an offence*. The placing of the phrase after the noun gives rise to an ambiguity, because it is not clear whether *convicted* is being used as an adjective or as part of the passive verb phrase form *was convicted*.

In the description

Every person who was imprisoned on the 1st day of January, 1970

there is doubt whether the verb is the passive of *to imprison* or the active *to be* plus an adjective as subjective complement. Does the description refer to persons upon whom a sentence of imprisonment was pronounced on the named day, or to a person who on that day was in a state of imprisonment. To avoid ambiguity one of the following expressions should be used:

Every person who was sentenced to imprisonment on the 1st day of January, 1970

Every person who on the 1st day of January, 1970, was serving a sentence of imprisonment

The foregoing differences in meaning are important in legislation, particularly when any question arises as to the application of a statute to prior events. As will be seen later,³ the position is here taken that a description of a person by reference to his status would include persons who acquired that status before the enactment of the statute, but a description of persons by reference to some action to be taken by or in respect of them would apply only to persons in respect of whom action was taken after the enactment of the statute.

Intransitive verbs, because they do not have objects, can be only in the active. They have only the present *-ing* participle, which may freely be used

3. *Infra* pp. 109-118

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as an adjective. If, however, the participle is followed by a prepositional phrase, it must follow the noun as in

Person absconding from his creditors

Person carrying on business

The participles of the verbs *to be* and *to have* are frequently used.

Every person being a shareholder

Every person having been a shareholder

Every person having in his possession

Phrases

A phrase is a group of words forming a unit, but it does not contain a predicate. Adjectival phrases may be prepositional or participial.

Prepositional Phrases

In a prepositional phrase a preposition takes an object and expresses some relationship between the subject and the object.

Member of Parliament

Person within Canada

Company in liquidation

The object of the preposition may have its own modifier, either an adjective or another phrase.

Judge of the county court

Judge of the court of Queen's Bench

Person under the age of sixteen

Ambiguities may arise where the preposition has two or more objects, as in

A wall of stone or brick and mortar, concrete or clay

One remedy is to repeat the preposition

A wall *of* stone and mortar, *of* brick and mortar, *of* concrete or *of* clay.

Two or more phrases with different prepositions may be joined.

Person over the age of sixteen and under the age of twenty-one

Person over the age of seventy and in necessitous circumstances

Phrases with the same preposition may be joined in two ways.

Person of full age and of full capacity

Person of full age and capacity

The foregoing phrases may readily be converted into clauses.

A person who is of full age

A person who is over the age of sixteen

The judge (or the person) who is the judge of the county court

A company that is in liquidation

THE PRINCIPAL SUBJECT

There may be ambiguity where a phrase is capable of modifying two or more subjects.

Every shareholder and director in the province

Every manufacturer or importer of machines

This type of ambiguity has already been discussed in relation to the use of adjectives.

Ambiguity may also arise where there are two successive prepositional phrases.

Every shareholder of a company in Canada

Does the phrase *in Canada* relate to *shareholder* or to *company*? The phrase relates to a noun, and there are two, namely, the subject *shareholder* and the object of the first preposition. One remedy is to convert one of the phrases to a clause.

A shareholder of a company who is in Canada

The pronoun *who* is personal and must refer to *shareholder*. Another remedy is to convert a prepositional phrase to a participial phrase.

A shareholder of a company incorporated in Canada

The word *incorporated* can refer only to company; but *domiciled*, for example, could refer to both. Alternatively, both phrases could be converted to clauses.

A person who is in Canada and is a shareholder of a company

A person who is a shareholder of a company that is resident (domiciled, incorporated, carrying on business) in Canada

No ambiguity arises where the second phrase is capable of application only to one of the nouns.

Director of a company in liquidation

Every person over the age of sixty years in necessitous circumstances

In the foregoing examples *in liquidation* cannot apply to *director* and *in necessitous circumstances* cannot apply to *sixty years*.

Participial Phrases

Participial phrases may be formed from transitive and intransitive verbs in the active form, and from transitive verbs in the passive form.

The present participle of transitive verbs may form phrases by taking an object.

Person claiming a right

Person undergoing punishment

Person holding shares

The infinitive may also be taken as an object.

Person claiming to be entitled

The participle may also be modified by an adverbial phrase.

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Person claiming against his creditors

The participle may, at the same time, take an object and be modified by an adverbial phrase as in

Person holding shares in his own right

Person undergoing punishment in a penitentiary

Or it may take two objects

Person believing himself to be entitled

The present participle of an intransitive verb cannot form a phrase by taking an object, but it can be followed by an adverbial phrase.

Person absconding from his creditors

The passive past participle may form a phrase when taking an object or when modified by an adverb or a prepositional phrase.

Person engaged in any trade

Person dismissed summarily

Person elected chairman

Company declared bankrupt

Person convicted of an offence

Person forcibly detained

Person detained against his will

The passive past participle may take an infinitive as object.

Person entitled to vote

Company authorized to carry on business

The participles *being* and *having been* are frequently used.

Person being a manufacturer

Person not being an importer

Person being a Canadian citizen

Person not having been employed in insurable employment

Participial phrases can readily be converted to clauses, and vice versa.

Person being (who is)

Person having been (who was) (who has been)

Company declared (that was declared)

Person convicted (who was convicted)

The emphasis on an element of a fact-situation can be heightened by expressing it in the form of a clause, and subordinated by expressing it by a phrase.

We have seen that using the passive past participle may cause an ambiguity because it is not clear whether the participle is the subjective complement of the verb *to be* or whether it forms a passive verb phrase.

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Every person being over the age of sixty-five who has been employed

Every person who is over the age of sixty-five and has been employed

Two or more participial phrases may be used without a conjunction.
This may be done where the verb forms have a common object.

Person receiving information, believing it to be true

Or where the object of one of the participles is the subject of the other.

Person receiving information, believing himself to be entitled to it

In the foregoing example, one of the phrases could be converted into a clause.

Person receiving information, believing that he is entitled to it

Prepositional phrases may be converted into participial phrases.

Person being of full age

Person of full age

Or they may be combined.

Person over the age of sixty years having resided in the province

Shareholders in the province, believing that

Clauses

The subject may be modified by an adjectival clause — a group of words containing its own subject and predicate. The clause may be introduced by a conjunctive pronoun, or a preposition coupled to a relative pronoun. Adjectival clauses may also be introduced by relative adverbs, but this form is rare in legislation.

Conjunctive pronouns

An adjectival clause introduced by a conjunctive pronoun may be used to modify the subject in various ways.

The subject may be modified by a passive verb.

Every person who is notified

Every society that has been incorporated

Or by an active verb taking an object.

Every person who has received a notice

Every person who violates this Act

Every corporation that has filed a return

Every witness who has failed to appear

Or by an intransitive verb.

Every debtor who has absconded

Or by a subjective complement.

Every person who is a shareholder

Every corporation that is a trading company

Two or more clauses may be joined.

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Every person who has been summoned and has appeared

Every person who has been summoned but has not appeared

Where there are two or more relative clauses the question arises whether the pronoun should be repeated. There are two situations. First, where all the clauses have the same function, and secondly where they have not.

In the following sentence (repeating both *who* and *and*) each clause is descriptive of the subject solely for the purpose of identifying him.

A pension may be paid to every person *who is* ordinarily resident in Canada at the date of his application *and who has* resided in Canada for at least ten years *and who* has attained the age of sixty-five years.

The more natural way of writing a sentence of this kind is to avoid the monotony of repetition.

every person *who*
is ordinarily resident
has resided *and*
has attained

It could also be written

every person
who is ordinarily resident
who has resided *and*
who has attained

But this form retains the monotony of repetition of *who*, and also can be construed as referring to three persons rather than one.

In the following the relative clauses do not all have the same function.

Every public officer *who* has taken an oath of office and allegiance *and who* has access to any secret official information *and who* communicates that information to a person not entitled thereto is guilty of an offence.

Here, the first two clauses are descriptive of the person for the purpose of identifying him, but the third clause, although in form a subject modifier, is in substance a description of the offence.

It would not be correct to re-write it as the first example above

Every public officer *who*
has taken an oath,
has access, and
communicates

for then a person who has done all three things could be prosecuted for any one. Taking an oath or having access to information are not intended to be offences; communicating information is. The clauses do not have the same function, and should be distinguished. This can be done by re-writing as follows:

Every public officer *who*

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has taken an oath, and
has access
who communicates

The distinction here, however, is made only by shifting *and* and inserting an extra *who*, and is therefore not conspicuous. It would be better to make a grammatical distinction by lowering the first two clauses to phrases thus:

Every public officer
having taken an oath, and
having access
who communicates

The pronoun could come before the phrases

Every public officer *who*
having taken
having access
communicates

If there are only two clauses of modest length repetition of the pronoun will usually not cause confusion, even if the two clauses are of a different character; but there should be no *and* between them.

The verb in the second clause may also be omitted

Every person who has been summoned and (has been) sworn
Every person who has documents and (has) papers

thus merging the two clauses into one. The second verb may not be omitted if it is not parallel to the first, as in the following example where the first verb is passive and the second active.

Every person who has been summoned and (has) appeared

Nor in the following example where the first form of the verb *to be* is a principal verb but the second auxiliary.

Every person who is a shareholder and is notified

Similarly, with the verb *to have*.

Person who has documents and has received a notice to produce

As indicated above, where there are two clauses the conjunctive pronoun may be omitted in the second, but only if the two pronouns represent the same person. The omission would not be proper in the following case.

Every person who owns a motor vehicle who fails to register is guilty of an offence.

Here the first *who* stands for *every person* but the second *who* stands for *every person who owns a motor vehicle*. Furthermore, the correct shade of meaning may be lost if *and* is inserted before or substituted for the second *who*

Every person who owns a motor vehicle and who fails
Every person who owns a motor vehicle and fails

THE COMPOSITION OF LEGISLATION

The foregoing examples might suggest that ownership of a motor vehicle is, in itself, an offence. In any case, they place equal emphasis on two acts, of which only one is an offence. The correct meaning is conveyed by any of the following:

Every person who owns a motor vehicle who fails to register it is guilty of an offence.

Every person owning a motor vehicle who fails to register

Every person being the owner of a motor vehicle who fails

Every owner of a motor vehicle who fails

Repetition of the conjunctive pronoun may be awkward if there are three or more clauses.

Every person who resides in the province who owns a motor vehicle who fails to register is guilty of an offence.

The above example can be improved by various methods.

Every person who resides in the province and owns a motor vehicle who fails to register is guilty of an offence.

Every person residing in the province and owning a motor vehicle who fails

Every person being a resident in the province and the owner of a motor vehicle who fails

Every person being a resident in the province and owning a motor vehicle who fails

Every person being resident in the province and owning a motor vehicle who fails

Every resident of the province owning a motor vehicle who fails

If the sentence becomes too complicated, it may be divided into two.

(1) Every person who resides in the province and owns a motor vehicle shall register.

(2) Every person who fails to register a vehicle as required by this section is guilty of an offence.

Or simplified by a definition.

(1) Every owner who fails to register is guilty of an offence.

(2) In this section "owner" means a person who resides in the province and is the owner of a motor vehicle.

We have seen how participial phrases may be converted into clauses by adding a verb; and clauses may be converted into phrases by omitting the verb.

Person (who is) claiming a right

Person (who is) undergoing punishment

Person (who is) holding shares

Person (who is) absconding

Person (who is) being examined

THE PRINCIPAL SUBJECT

Trustee (who is) authorized to act

Person (who is) engaged in business

Person (who is) entitled to vote

Person (who has been) elected chairman

It may be desirable to convert a clause into a phrase in order to facilitate the addition of other clauses or other modifiers. But it must be borne in mind that the omission of the verb may destroy an essential time element.

The foregoing comments on clauses with *who* apply also to clauses with *that*. As a general principle, if all the clauses are of the same character and have the same function, a single *that* will serve to introduce them; but if they differ they should be distinguished as with *who*, by having one *that* for each group or by converting one group to phrases.

Preposition and Relative pronoun

In this form a preposition is followed by a relative pronoun.

Person to whom notice has been given

Person upon whom a summons was served

Person from whom goods were taken

Person on whose premises goods were found

Company to which notice was sent

Misuse of prepositions should be watched where there are two or more clauses requiring different prepositions.

Person to whom notice was given and by whom the appeal was brought

It would be incorrect to omit the second preposition. If the two prepositions are the same, the second may be omitted.

Person to whom notice was given and goods were sent

Gender and case

Pronouns may vary in gender and case.

Every corporation and director who has failed to comply with this Act

In the above example, the pronoun *who* is not capable of application to the neuter *corporation*. The substitution of the pronoun *that* will cure the error. With natural persons only, *who* is generally preferred to *that*; but with natural persons and corporations together, *that* is suitable.

The pronoun may be nominative, possessive or accusative.

A person who has appealed

A person whose appeal has been heard

A person upon whom notice has been given

The use of *whose* in relation to a corporation is sanctioned.

A corporation whose directors are Canadian citizens

The alternative *corporation the directors of which* is awkward.

THE COMPOSITION OF LEGISLATION

Where the clause is introduced by a preposition plus a pronoun, the pronoun may be possessive or objective.

Person on whose premises goods were found

Person on whom notice was served

Clauses with pronouns in different cases can be combined.

Person who has appealed and whose appeal has been heard

Person on whom notice was served and on whose premises the goods were found

Person who has applied but to whom a notice has not been given

There may be ambiguity where the pronoun can refer to more than one person.

Inspector who has examined an applicant who is not satisfied

The second *who* could refer either to the inspector or the applicant.

A magistrate who has reported to a judge whose jurisdiction extends to the district

Does *whose* apply to judge or magistrate?

Defining and non-defining clauses

Strict writing requires that commas be used to mark off non-defining relative clauses and that no comma be placed before a defining clause. If the relative *which* is used for both kinds of clauses then it is only the presence or absence of a comma that distinguishes between the two. The clause

regulations which the Minister may make

is defining and therefore one must look elsewhere for the authority to make the regulations. But in

regulations, which the Minister may make

the clause is non-defining and therefore is an additional enactment conferring power to make regulations.

There is no problem in speech. When a speaker comes to a non-defining clause he pauses briefly and drops his voice, but with a defining clause he goes on without pause or change of tone. In writing, this distinction can be made only by a comma. It is dangerous to distinguish between the two kinds of clauses by a comma only. It might inadvertently be inserted where it should not be, or omitted from where it should be, and hence lead to confusion or misconstruction.

The relative *that* is always defining. It is therefore recommended that this relative be used in preference to *which* in defining clauses and that non-defining clauses always be introduced by *which*, preceded by a comma and terminated by either a comma or period. Then the character of the clause will always be clear.

An investment corporation that was incorporated by letters patent

THE PRINCIPAL SUBJECT

An investment corporation, which is hereinafter called “corporation”,

A defining clause and a non-defining clause, because they are not grammatical equals, should not be joined by a co-ordinating conjunction. In the following example *and* should be omitted.

An investment corporation, which is hereinafter called “corporation”, *and* that has made a return.

The connective *that* can often be omitted where the qualified noun is, in effect, the object of the verb in the clause.

Property (that) the deceased transferred.

A clause of this kind without a connective is known as a contact clause, and it is always defining. A reduction in the number of *thats* in a sentence can often improve its literary quality.

Modification by Exclusion

The subject may be broadly described and then limited by exception. There are in reality two descriptions, one including and the other excluding.

Every person except a child under the age of ten

Every person other than a child

Every shareholder, except one who resides out of the province

Every corporation except a trading company

Description by Apposition

The modifier may be listed in apposition to the subject.

Every person who is any of the following, namely:

(a) principal,

(b) master, or

(c) employer

In the following, the appositive is a definition. This device is useful because a single word or expression can then be used in all subsequent sections to mean the persons described.

Every contributor, that is to say, every person who is employed in the civil service and is by this Act required to contribute

The archaic *to wit*, the foreign *videlicet* or the abbreviation *viz.* should not be used to introduce the appositive.

Sometimes *namely*, although not used, is understood.

Description by Definition

The description of a subject may be contained in a definition. For example an interpretation clause may define a *contributor*, and the definition would accordingly modify the word *contributor* wherever it appears in the Act.

The definition may be in the form of an application section.

This Act applies only to charitable societies incorporated after the 1st day of January, 1950.

The term *society* in the Act would be modified by the foregoing section.

CHAPTER IV

THE PRINCIPAL PREDICATE

THE SIMPLE PREDICATE

In its simplest form the predicate is a verb without a modifier.

Every person shall register.

The appellant may appeal.

Two or more predicates may be combined.

The inspector may enter and search.

A peace officer may arrest and detain.

The use of two or more verbs raises problems with respect to the conjunction. Should it be *and* or *or*? In many cases it makes no difference, but in others the choice of the proper conjunction is important; and in some situations further words are necessary.

In a prohibition, *or* is usually satisfactory, if two acts are individually prohibited.

No person shall drive *or* operate.

Where the complete offence requires two actions, *and* is correct.

No person shall enter *and* remain.

In a command, if both acts are to be performed (i.e. one will not suffice), *and* should be used.

A peace officer shall arrest *and* detain.

If the doing of one thing discharges the obligation *or* should be used.

The appellant shall deliver *or* send.

Where permission is granted, *or* is usually satisfactory, although sometimes there is danger that the doing of one thing is construed as exhausting authority to do the other; and if *and* is used, there is the possibility that the power is to do all or none. It may be necessary to authorize the doing *of all or any of the following*.

The proper time sequence should be followed -- may *arrest and detain* rather than *detain and arrest*. Where a particular time sequence is mandatory, there should be further directions.

Shall enter and, having entered, remain.

THE COMPOSITION OF LEGISLATION

PREDICATE MODIFIERS

The object

Transitive verbs require an object to complete their sense. There may be a direct object and an indirect object; and the object may be either a single word, a phrase or a clause.

The appellant shall file a notice.

The appellant shall file a notice of appeal.

The applicant shall pay a fee.

The applicant shall pay a fee of one dollar.

The applicant shall pay the clerk a fee.

A witness may refuse to answer.

No person shall refuse to comply with the order.

A director shall disclose that he has an interest.

Subjective complement

The subjective complement, or predicative as it is sometimes called, completes the action of the verb but at the same time describes the subject. Grammatically, it is part of the verb structure and is, therefore, here considered as a verb modifier, but its function is to identify or describe the subject of the verb.

The subjective complement may be a noun (predicate noun) or an adjective (predicate adjective) and can be a single word or a phrase or clause.

A judge is *ex officio* a magistrate.

The contract is void.

For the purposes of this Act, a widow having an income of less than one thousand dollars a year shall be deemed to be in necessitous circumstances.

Adverbs

A verb may be modified by one or more adverbs.

No person shall drive recklessly.

No person shall drive recklessly or dangerously.

Phrases

Prepositional Phrases

A verb may be modified by a prepositional phrase — a phrase consisting of a preposition with an object. The object may be a noun or noun equivalent, or a gerund.

No person shall create a disturbance near a hospital.

No person shall create a disturbance within a hospital area.

No person shall create a disturbance in the vicinity of a hospital.

A driver shall turn to the right.

Every person shall leave the poll after voting.

Every person shall leave after casting his vote.

THE PRINCIPAL PREDICATE

A driver shall stop before entering an intersection.

A prepositional phrase is used to modify a noun as well as a verb. There may, in some cases, be doubt whether a particular phrase is adjectival or adverbial. Normally, an adjectival phrase is placed immediately after the noun it modifies; an adverbial phrase, although usually placed after the verb it modifies, is sometimes placed before, especially if there are two or more predicates. The position of the phrase, however, is not always sufficient to remove doubt. Thus, both the sentences

No person in a public park shall damage any plant.

No person shall damage any plant in a public park.

are obscure because the phrase *in a public park* could be construed as qualifying the verb *damage* or the nouns *person* or *plant*. Clarity is achieved by inserting the present participle of an appropriate verb, either as an adjective or as part of a verb phrase.

No person shall damage any plant (that is) growing in a public park.

In some constructions a phrase is related to the wrong verb. In

No person shall in a public park damage any plant or permit a dog to run at large.

the phrase *in a public park* relates to *permit* when it obviously is intended to qualify *run at large*. The following is an improvement,

No person shall damage any plant growing in a public park or permit a dog to run at large in a public park

where the phrase first modifies *growing* and is then repeated to modify *run at large*.

Infinitive phrases

The predicate may be modified by an infinitive phrase, either with or without an object.

No person shall neglect to report.

No person shall fail to file a return.

Clauses

The predicate may be modified by a clause, joined to the remainder of the sentence by a subordinating conjunction.

No person shall fish unless he holds a licence.

Every person shall report when he is ordered to do so.

Every person shall appear if he has been summoned.

The clause is introduced by a subordinating conjunction. The function of the clause is to express condition, purpose, time, place, manner or other fact-situation in which the law operates, or, in other words, the case. The more common subordinating conjunctions are *after*, *although*, *before*, *if*,

THE COMPOSITION OF LEGISLATION

notwithstanding, unless, until, when, whenever, where, wherever, while, as long as, as often as, as soon as, with a view to.

The case may refer to things or to persons, and, where it refers to persons, it may refer to the principal subject of the sentence or to some other person. And the case may refer both to things and persons.

Where an accident has occurred on a highway, the driver shall report to the nearest police constable.

Where notice of appeal has been filed, the registrar shall inform the respondent.

Where the driver of a motor vehicle is involved in an accident, he shall report the accident to the police.

Where the plaintiff has set the case down for trial, the defendant may move to strike out the claim.

The following are some examples of clauses modifying the predicate:

Where a trustee is unable to dispose of the property, the court may make an order.

When a trustee has completed his duties, he shall apply to the court for a discharge.

Where a trustee has not been appointed, the Official Receiver shall appoint a trustee.

Where an estate has not been fully administered within three years, the trustee shall so report to the court.

If no bid has been received, the court may make a vesting order.

The Minister may cancel the licence *after* he has considered the report.

The Official Receiver shall perform the duties of trustee *until* a trustee is appointed.

Where the trustee dies, the Official Receiver shall appoint a successor.

As soon as he is notified of his appointment, the trustee shall take possession of the property.

The trustee may carry on the business of the bankrupt *when* it is necessary to do so in the interests of the estate.

The trustee may bring an action to recover the property *before* the first meeting of the creditors has been held.

Two subordinate clauses may be joined by a co-ordinating conjunction, and it is then generally advisable not to repeat the subordinating conjunction.

Where a writ of execution has issued and the execution debtor cannot be found

When the debtor resides outside the jurisdiction and has no assets within the jurisdiction

One sentence may also contain two or more adverbial clauses introduced by different conjunctions.

THE PRINCIPAL PREDICATE

The court may, *if* it is necessary for the protection of the estate, *after* the petition has been filed and *before* a receiving order is made, appoint an interim receiver.

Qualifying clauses expressing the case may sometimes be converted into phrases with the same or substantially the same effect, particularly where the conjunction is a word that can also be used as a preposition.

The Minister, after he has considered (after considering) the report, may cancel the licence.

The trustee may recover the property before the creditors have held their first meeting (before the first meeting of the creditors).

The Official Receiver shall perform the duties of trustee until a trustee is appointed (until the appointment of a trustee).

Where the trustee dies (in the event of the death of the trustee), the Official Receiver shall appoint a successor.

As soon as he is notified (upon being notified) of his appointment, the trustee shall take possession of the property.

Where a trustee has not been appointed (in the event of a trustee not having been appointed) the Official Receiver shall appoint a trustee.

Frequently, one conjunction may be used in the place of another with the same effect. The conjunctions *if*, *where*, *whenever*, *when*, are often interchangeable.

Where the principal subject is also the subject of the clause, the case can sometimes be converted into an adjectival clause — i.e. from a predicate modifier to a subject modifier.

Where a person ceases to be employed in insurable employment he is entitled to be paid benefits.

A person who ceases to be employed in insurable employment is entitled to be paid benefits.

If any person violates this Act he is guilty of an offence.

A person who violates this Act is guilty of an offence.

There is no definite rule about the position of the case. A case introduced by *where* can usually be placed at the beginning, but not always. It is usually best not to use pronouns to represent people not yet identified.

Unless *he* holds a licence, no person shall fish.

No person shall fish unless he holds a licence.

Where the inspector has given *him* permission, the owner may remove the goods.

The owner may remove the goods where (or if) the inspector has given him permission (to do so).

Conditions in Predicates

Sometimes a static situation is described by a verb implying continuous action, when it would be better to use an adjective.

THE COMPOSITION OF LEGISLATION

Thus, in a former Ordinance respecting prairie fires there was a provision exempting a railway company from liability for a fire caused by sparks

if there is maintained .. on each side of the railway line ... a fireguard of ploughed land ... *kept free* from weeds and other inflammable matter and the space between the fireguard and the railway line is *kept burned or otherwise freed* from the danger of spreading fire.

The verbs *kept free*, *kept burned* and *kept freed* imply that something is being done, namely, a continuous *keeping free* or *keeping burned*. Technically, there would be breach of the condition if the land was not being *kept free* or *kept burned* throughout the season, but at the time of the fire was in fact free.

The situation contemplated should be described by fact and not by action

if (at the time of the fire) there *is* a fireguard that *is free* of weeds and the space between ... *is burned over* or otherwise *free*..”

Conditions to the predicate should be precedent and not subsequent. For example, the *Navigable Waters Protection Act* provides that

No work shall be built ... through or across any navigable water ... unless such work is built, placed and *maintained* in accordance with plans and regulations approved or made by the Governor in Council.

Compliance with regulations can be a condition precedent to building; but a work cannot be maintained until it is built. Maintenance according to the regulations cannot therefore be a condition precedent to building.

There should be a separate enactment requiring maintenance of the work in accordance with the regulations.

Similarly, the following would be defective:

A person may kindle a fire for the purpose of clearing land if

- (a) the land is completely surrounded by a fireguard, and
- (b) the fire is guarded during its continuance by three adult persons.

The fire cannot be lit until it is guarded but it cannot be guarded until it is lit. The clause in (b) should be raised from a subordinate one to an independent one.

a person who kindles a fire for the purpose of clearing land shall during its continuance cause it to be guarded by three adult persons.

CHAPTER V

SENTENCE MODIFIERS

A compound sentence consists of two or more clauses, joined by a co-ordinating conjunction, or separated by a semicolon. Although punctuated as a single sentence, a compound sentence is in reality a collection of two or more sentences.

A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt, *and* the court shall give in writing such directions as to it appear proper in the circumstances.

The principal co-ordinating conjunctions found in legislation are *and*, *but*, *or*, *nor*; and the preposition *except* coupled with *that* may also be regarded as a conjunction. The conjunctions *but* and *except that* serve to introduce qualifying rules; and the conjunctions *and* and *or* introduce additional or alternative rules.

The two or more clauses in a compound sentence may be written as separate sentences. The example given above could be broken into two separate sections, but where the subject-matter is closely related it is frequently preferable to combine the clauses into a single section, particularly where repetition of sentence elements can be avoided. On the other hand, if the sentence becomes too complicated, it should be broken up into smaller units.

The chairman shall cause minutes of the proceedings at the first meeting of the creditors to be drawn up and entered in a book kept for that purpose, *and* the minutes shall be signed by him or by the chairman of the next ensuing meeting.

In the above example, the independent clause *the minutes shall be signed by him or by the chairman of the next ensuing meeting* could stand by itself as a separate sentence, but one would have to rely on the context to explain *minutes*, *him* and *next*. It is desirable to make each sentence as self-contained as possible. Doubts may arise if a reader must go to other sentences to find the meanings of words, because there is nothing to show to what sentences he must go. If two clauses are at least separated by a semicolon, the reader is less likely to be misled.

The trustee may call a meeting of inspectors when he deems it advisable, *and* he shall do so when requested by a majority of the inspectors.

In the foregoing example, by uniting the two clauses repetition of the action of the first clause can be avoided by using the shorter *do so*.

Failure to comply with this Act does not invalidate any proceedings, *but* the officer in default is responsible for all damages that may result therefrom.

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In this example, combination of the two sentences permits use of *therefrom* as a reference to *Failure to comply with this Act*.

Certain adverbs may also be used as co-ordinating conjunctions, and are occasionally found in legislation — *accordingly, consequently, furthermore, likewise, moreover, nevertheless, otherwise*. These words are in reality adverbs, but can be used to connect independent clauses or even sentences. But they must be preceded by a stop — semicolon, colon or period — or by a regular conjunction — *and* consequently; *for* otherwise; *but* nevertheless.

Frequently an entire sentence, as distinct from some element thereof, is subject to modification. The words commonly employed in legislation are:

Subject to this Act (the preceding section)

Notwithstanding any other provisions of this Act

Notwithstanding the preceding section

Except as provided in Part II

(Subject) as provided in this Act

For the purposes of this Act

These expressions are used to avoid an apparent conflict between different enactments or between an enactment and other laws. Where there is conflict between two laws, it is desirable to resolve the conflict by indicating which of the two is to prevail.

The expressions *subject to this Act* or *as provided in this Act* are used as a warning that the enactment must not be regarded as complete. For example, in

Every veteran is entitled to be paid a gratuity as provided in this Act.

Subject to this Act, every Canadian citizen is entitled to vote.

it is clear that the remaining provisions of the Act must be looked at; the sections do not in themselves confer complete rights.

But a plethora of *subjects to* or *notwithstanding*s should be avoided, for they make the statute too legalistic, and a reader will become confused if he must constantly jump back and forth when reading it. Bearing in mind that a statute must be read as a whole, it is often quite apparent that one provision is subject to or overrides another. If, however, there is danger that the courts may make the wrong selection, then the draftsman should indicate which is the dominant provision.

Where two sections are in apparent conflict, one might begin with *notwithstanding* or the other with *subject to*. Care should be taken to avoid the same expression for two enactments on the same subject. If there are two *notwithstanding* phrases, which prevails? Where the subject-matters of one section and another qualifying section make it desirable, from the point of view of arrangement, to place them remote from each other, a warning in the first section that more is to come is often desirable.

SENTENCE MODIFIERS

The expression *for the purposes of* a named section or division of an Act narrows the scope of a definition. In

For the purposes of this Part the expression “cattle” includes horses, the enlarged meaning of *cattle* is confined to one Part of an Act.

Sentences are also qualified, as a whole, by transitional and operation sections.

CHAPTER VI

DEFINITIONS

The principal function of a definition section is to clarify the statute by assigning statutory meanings to words and expressions found therein. Another important function is to shorten and simplify the statute and its provisions. The following examples illustrate the various uses of definition provisions.

TO DELIMIT

Many definitions are intended to set the limits of meaning, without altering the normal meaning.

“subsidiary coin” means a coin other than a gold coin.

“property” means real or personal property.

“aircraft” means any machine used or designated for navigation of the air.

“invention” means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

“disabled” means incapable of pursuing regularly any substantially gainful occupation.

“salary” means the compensation received for the performance of the regular duties of a position or office.

“Canadian citizen” means a person who is a Canadian citizen within the meaning of the *Canadian Citizenship Act*.

“advertise” means to make known by the publication or distribution of any advertisement, circular or other notice.

“highway” means any public road, street, lane or other public way or communication.

TO NARROW

A definition may narrow the ordinary meaning of a word. Things ordinarily included are excluded, either by setting limits or by expressly excluding.

“dividend” does not include a stock dividend.

“rank” means substantive rank or appointment, but does not include acting rank.

“grain” means wheat, oats, barley and rye.

“oil” means any liquid hydrocarbon.

THE COMPOSITION OF LEGISLATION

TO PARTICULARIZE GENERAL DESCRIPTIONS

A definition may restrict a word to a particular thing without changing its ordinary meaning.

“contract” means a contract made before the 1st day of January, 1955.

“notes” means notes of the Bank of Canada payable to bearer on demand and intended for circulation.

“agreement” means an agreement made under section 3.

“widow” means a widow of a veteran.

TO ENLARGE

A definition may retain the ordinary meaning of a word and add a meaning it does not normally have.

“lease” includes an agreement for a lease.

“servant” includes agent.

“money” includes negotiable instrument.

“fish” includes shell fish, crustaceans and marine animals.

Occasionally the *included* meaning is virtually exhaustive.

“intoxicant” includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating.

The above definition seems to include everything that is included in the normal meaning. *Includes* rather than *means* is used to catch anything that didn’t happen to come to the draftsman’s mind; he has therefore protected himself against oversight. Similarly, in the following examples:

“rodent” includes all members of the order Rodentia.

“mark” includes mark, sign, device, imprint, stamp, brand, label, ticket, letter, word or figure.

TO SETTLE DOUBTS

There are cases where there may be doubt whether a word means a particular thing. *Includes* is used, but rather than add a meaning it serves to settle the doubt. For example —

“securities” includes bonds, debentures and obligations, secured or unsecured, whether issued within or outside Canada, and rights in respect of such bonds, debentures and obligations, but does not include shares of capital stock of corporations or rights in respect of such shares.

“highway” includes any public road, street, lane or other public way or communication.

“unmarried person” includes a widow, a widower and a divorced person.

“child” includes a natural child, stepchild or adopted child.

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“wares” includes printed publications.

“land” includes mines, minerals, easements, servitudes and all other interests in real property.

TO ABBREVIATE OR TO SHORTEN AND SIMPLIFY COMPOSITION

Definitions are commonly used to abbreviate, particular names of corporations, officials, bodies, etc. Thus, *Commission* may be defined to mean *Unemployment Insurance Commission*; *Corporation* to mean the *Canadian Overseas Telecommunication Corporation*; *Minister* to mean the *Minister of Public Works*; *Board* to mean the *Board of Directors*. Definitions are also used to define verbs, things and expressions for the purpose of simplifying construction.

“Convention” means the International Convention for the Northwest Atlantic Fisheries set out in the Schedule.

“trafficking” means the importation, exportation, manufacture, sale, giving, administering, transportation, delivery or distribution by any person of a drug or any substance represented or held out by such person to be a drug, or the making of any offer in respect thereof, but does not include

- (i) the importation or exportation of any drug by or on behalf of any person who has a licence therefor under section 3, or
- (ii) the manufacture, sale, giving, administering, transportation, delivery or distribution of a drug, or the making of any offer in respect thereof, by or on behalf of any person who has a licence therefor under section 3, or by or on behalf of a physician, dentist, veterinary surgeon or retail druggist for a medicinal purpose.

“law of the province” means a law of a province or municipality not repugnant to or inconsistent with this Act.

“unsanitary conditions” means such conditions or circumstances as might contaminate a food, drug or cosmetic with dirt or filth or render the same injurious to health.

“apply” includes to apply or attach to, or to use on, in connection with, or in relation to, an article by any method or means, whether to, on, by, in, or with

- (i) the article itself,
- (ii) anything attached to the article,
- (iii) anything to which the article is attached,
- (iv) anything in or on which the article is, or
- (v) anything so used or placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself.

“sell” includes to dispose of for valuable consideration, to offer to sell, to distribute or offer as premiums or prizes, to offer to dispose of for valuable consideration, to have in possession with intent to sell or intent to dispose of for valuable consideration and to display in such manner as to lead to a reasonable belief that the article is intended for sale.

“Member” means a member of the House of Commons.

“officer” means a commissioned officer.

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“recipient” means a person to whom payment of an allowance has been authorized under this Act.

“deal in” includes produce, import, export, possess, buy, sell, lease, hire, exchange, acquire, store, supply, operate, ship, manufacture, consume and use.

“sell” means sell, offer for sale, expose for sale, advertise for sale, manufacture for sale or have in possession for sale.

SUBSTANTIVE PROVISIONS

As a general rule it is best to avoid incorporating substantive provisions in definitions. For example—

“post letter” means any letter transmitted by the post or delivered through the post, or deposited in any post office, or in any letter box put up anywhere under the authority of the Postmaster General, whether such letter is addressed to a real or a fictitious person or not, and whether it is intended for transmission by the post or delivery through the post or not; and a letter shall be deemed a post letter from the time of its being so deposited to the time of its being delivered to the person to whom it is addressed, or so long as it remains in the post office or in any such letter box or is being carried through the post; and a delivery to any person authorized by the Postmaster General to receive letters for the post shall be deemed a delivery at the post office, and a delivery of any letter or other mailable matter at the house or office of the person to whom the letter is addressed, or to him, or to his servant or agent, or other person considered to be authorized to receive the letter or other mailable matter, according to the usual manner of delivering that person’s letters, shall be a delivery to the person addressed;

Everything after the first semicolon should be taken out of the definition and placed elsewhere, preferably as three or four separate sections.

In the following examples the definitions could, perhaps, be construed to confer the necessary authority, but it would be better, in addition, to add a section expressly conferring power to approve, define or designate.

“approved lender” means a lender approved by the Minister for the purpose of making loans under this Act.

“cargo” means any goods, securities, currency, articles or things defined as cargo by the Minister.

“fisheries product” means any natural product of the commercial fisheries of Canada designated by the Minister and includes any product derived therefrom, if so designated.

“agricultural product” means any natural product of agriculture designated by the Minister.

USE OF WORD DEFINED

Normally a definition should not use the word defined. But use of the defined word in the definition causes no difficulty where the definition merely particularizes a general description as in “*contract*” means a *contract*

DEFINITIONS

made under this Act or in some *including* definitions, as in “*child*” *includes adopted child*, where the purpose is to settle doubts.

POSITION OF DEFINITION SECTION

In Canadian statutes the definition section is usually placed at the beginning, immediately after the short title; in some jurisdictions it is found at the end. Where a statute is divided into Parts, each Part may have a definition section, and there may also be a definition section at the beginning applicable to all Parts.

SPECIAL DEFINITIONS FOR SECTIONS

Sometimes a definition is required for one section alone and it may be more convenient to put the definition into that section rather than the general definition section. Its best position is a matter of judgment.

INCORPORATING A DEFINITION IN A SECTION

Sometimes a long description must be used two or more times in one section, and it may be convenient to insert a definition immediately after the description (hereinafter called *A*). This device should not normally be used if the definition is to apply to other sections as well.

CONJUNCTION

There is usually a choice between *and* and *or*. Thus, *A means B, C, and D* and *A means B, C, or D*. In the former instance, *A* is regarded as meaning all of the things mentioned, and in the latter *A* is regarded as meaning any of them. Either form may be used, but in some cases the disjunctive is clearer.

MEANS AND INCLUDES

A word should not be defined to *mean and include* something; *means* restricts and *includes* enlarges and the two words cannot be used in one breath.

“intoxicating liquor” *means and includes* all spirits, strong waters, spirituous liquors, wines, fermented or compounded liquors or intoxicating fluids.

“live stock” *means and includes* horses, mules, cattle, sheep, goats, swine, foxes, rabbits and poultry and such other animal or bird as the Minister may from time to time by regulation prescribe.

“package” *means and includes* sack, bag, barrel, bin or other container.

But it is in order in some cases to define a word as *meaning* one thing and *including* another.

“securities” *means* securities of Canada and *includes* bonds, notes, deposit certificates, non-interest bearing certificates, debentures, treasury bills, treasury notes and any other security representing part of the public debt of Canada.

This is in reality a double definition. First *securities* is particularized, and then doubts are removed.

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“agricultural equipment” *means* implements, apparatus, appliances and machinery, of any kind usually affixed to real or immovable property, for use on a farm, *but does not include* a farm electric system.

Here we have a restrictive definition followed by an exclusion.

“cattle” *means* neat cattle or an animal of the bovine species by whatever technical or familiar name it is known, and *includes* a horse, mule, ass, pig, sheep or goat.

This is again a double definition. There could be, for example, a definition of *animal* as meaning *cattle, horse, mule, etc.* followed by a definition of *cattle* to mean *neat cattle or an animal of the bovine species.*

“highway” *means* a road to which the public has the right of access, and *includes* bridges over which or tunnels through which a road passes.

Again, a double definition.

IN RELATION TO

Words in addition to *means* or *includes* may be used to introduce a definition. There are instances where a word is to have a special meaning in one case, and its ordinary meaning in other cases.

“title” in relation to a loan secured by a mortgage on a long-term lease means the entire interest of the lessee.

“distinctive” in relation to a trade mark means a trade mark that actually distinguishes the wares or services in association with which it is used by its owner from the wares or services of others or is adapted so to distinguish them.

Or a word may have two defined meanings for two situations.

“recorded address” means

- (i) in relation to a person as a shareholder, his last known post office address according to the share register of the bank, and
- (ii) in relation to a person in any other respect, his last known post office address according to the records of the branch concerned.

A common phrase for these situations is *in relation to*. Other expressions, like *in the case of*, are also used.

“resident of Canada” means, *in the case of* a natural person, a person who ordinarily resides in Canada and, *in the case of* a corporation, a corporation having its head office in Canada or operating a branch office in Canada.

Occasionally one finds *in its application to* or *when referring to*.

GENERAL

Definitions should be listed in strict alphabetical order.

In the final draft of a bill, the definitions should be carefully examined to see if any are unnecessary. Sometimes a definition is inserted for a section that is dropped in the drafting stages.

Where a definition is used only in another definition, an effort should be made to combine them into one.

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Definitions should not be inserted unless they are needed. Frequently a word or expression cannot be exactly defined and the presence of a definition may cause more difficulties in construction than its absence. In many cases the dictionary meaning is adequate and the exact interpretation of the word or expression can safely be left to the courts.

The definition technique can usefully be employed to make a sentence more comprehensible by removing lengthy descriptive material from the case so as to expose more prominently the main subject and predicate. In one section of the *Official Secrets Act*, for example, there are fifteen lines of type describing the information to which the section applies. A defined expression, such as "official secret", could be substituted for this descriptive material, thus cutting the length of the section in half, and making it more presentable. In situations such as this, where an expression is devised for a specific purpose, the expression chosen should be one that, apart from the definition, will convey to the reader the general idea of the definition. Generally speaking, it is better to write the sentence in complete form first, than to start with an artificial definition and build a sentence around it. The draftsman might then see that a better way to make the provision more presentable would be to re-cast its grammatical form, or divide it into two or more sections or subsections.

CHAPTER VII

PARAGRAPHING

A legislative sentence can often be improved by breaking it up into indented paragraphs or subparagraphs, appropriately labelled by letter or number. There are two types of this technique. One type is a pure tabulation, where a series of separate things are listed under words like *as follows*, express or implied. The other is an indentation of some of the lines of an ordinary sentence. Both types are here designated as paragraphing.

Paragraphing provides a visual aid to comprehension by breaking up solid blocks of type; it delivers the sentence in packages, so to speak, making it easier for the mind to grasp the whole. It does visually what the reader would do mentally without it.

Paragraphing can also avoid ambiguity by confining modifiers to only those parts of the sentence they are intended to modify; and it can be used to avoid unnecessary or tiresome repetition.

Like any other technique, however, paragraphing can be abused and misused. It can make a sentence choppy and stilted, and if it is carried to more than two subdivisions, or if it includes too much material, it may defeat its purpose by making it more difficult to comprehend the sentence, rather than less. There is the danger too that by using this technique the draftsman will be tempted to try to put everything he wants to say into one sentence when he ought to write several sentences. Putting too much material in one grammatical sentence makes it too involved and complicated, and by trying to put everything into one mould the draftsman may lose his freedom to convert and re-arrange his modifiers.

A number of examples, taken from statutes, are set out below to illustrate the many ways in which the device of paragraphing can clarify a complex sentence. At the same time a few comments will be offered here and there pertaining to matters dealt with in other Chapters. And the examples will serve to illustrate the various types of subject and predicate modifiers and the way they are combined to form the sentence.

SENTENCES

A sentence modifier can, without repetition, be made to apply to two or more sentences.

Notwithstanding anything in section 8,

- (a) no association has the power to make a loan upon the security of a mortgage on real property owned by the borrower,

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- (b) no association shall make a loan to or undertake any guarantee on behalf of any co-operative credit society unless the society holds a valid and subsisting certificate issued under section 19 or 80; and
- (c) no association shall make a loan to, or accept a deposit from, any natural person.

In the above example each paragraph is an independent sentence and could be so written. Each sentence, however, if written separately, would have to include the phrase *Notwithstanding anything in section 8*, but by combining the sentences the phrase needs to be written only once.

Except where otherwise provided by law,

- (a) the defendant in proceedings under this Part may appeal to the appeal court
 - (i) from a conviction or order made against him, or
 - (ii) against a sentence passed upon him; and
- (b) the informant or the Attorney General in proceedings under this Part may appeal to the appeal court
 - (i) from an order dismissing an information, or
 - (ii) against a sentence passed upon a defendant,

and the Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this section.

In the above example there are three sentences; the first two have in common the expression *except where otherwise provided by law*; the third sentence *and the Attorney General...etc.* could be a separate section, but the subject-matter is so closely connected with the previous sentences it readily lends itself to amalgamation. Paragraphs (a) and (b) are broken up again; in each sentence the predicate is modified, in the alternative, by two phrases.

The following provisions apply in respect of appeals, namely,

- (a) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant
 - (i) for any alleged defect therein in substance or in form, or
 - (ii) for any variance between the information or process and the evidence adduced at the trial,unless it is shown
 - (iii) that the objection was taken at the trial, and
 - (iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and
- (b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect.

In the above example there are two sentences (paragraph (a) and paragraph (b)) both governed by the opening words. In paragraph (a) there are two

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subject modifiers, and these are set out in subparagraphs (i) and (ii); there are also two predicate modifiers, (iii) and (iv), governed by the words *unless it is shown*, which must go out to the left-hand margin even with paragraphs (a) and (b). If not taken out, *unless* would apply only to (ii), and if taken out to the outer left-hand margin, would relate to *apply* in the opening words.

SUBJECTS

Two or more subjects, whether alternative or cumulative, may be set out in paragraphs.

The following properties, namely,

- (a) lands acquired before or after the coming into force of this Act with territorial funds,
- (b) public lands, the administration of which has before or after the coming into force of this Act been transferred by the Governor in Council to the Territories, and
- (c) all roads, streets, lanes and trails on public lands,

are vested in Her Majesty in right of Canada.

There should always be general words ahead of the enumeration; in this case *the following properties, namely*. A modifier, applicable to all the subjects may also be included in the opening words as in the following example:

The following inventions, and all rights with respect thereto in Canada or elsewhere, are vested in Her Majesty in right of Canada, namely,

- (a) an invention made by a public servant
 - (i) while acting within the scope of his duties or employment, or
 - (ii) with facilities, equipment or financial aid provided by or on behalf of Her Majesty, and
- (b) an invention made by a public servant that resulted from or is connected with his duties or employment.

In the above example the first lettered paragraph is further divided. The words *an invention made by a public servant* are common to both paragraphs, but it would be improper to divide as follows:

an invention made by a public servant

- (a) while acting within the scope of his duties or employment,
- (b) with facilities, equipment, financial aid provided by or on behalf of Her Majesty, or
- (c) that resulted from or is connected with his duties or employment.

In the foregoing illustration paragraphs (a) and (b) are adverbial phrases modifying the verb *made*, but paragraph (c) is an adjectival clause modifying *invention*; the phrases and the clause should not be joined by the co-ordinating conjunction *or* or *and* because they are not of equal grammatical value.

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SUBJECT MODIFIERS

Subject modifiers may also be set out in lettered paragraphs.

An order shall not be made under this section in respect of

- (a) property to which an innocent purchaser for value has acquired lawful title,
- (b) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it, or
- (c) a negotiable instrument that has, in good faith, been taken or received by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an offence had been committed.

In the foregoing example, each lettered paragraph describes the nature of the order that may be made. In each there is a phrase, but the noun in the phrase is modified by a clause.

In addition to evidence of the passing of the by-law, and of the publication thereof in the manner provided in this section, statements showing

- (a) the number of shares issued,
- (b) the number of shares held by each shareholder represented at the meeting at which the by-law passed,
- (c) the number of shareholders who voted for the by-law,
- (d) the assets and liabilities of the bank, and
- (e) the reason and causes why the reduction is sought,

shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving the by-law.

In the above example, the subject and predicate are *statements shall be laid* and the various phrases (governed by *showing*) descriptive of the statement are set out in lettered paragraphs. There are also two groups of predicate modifiers — one at the beginning and one at the end of the sentence.

In the following example there is a double enumeration.

Every person, except

- (a) a person who has a licence therefor under section 3,
- (b) a physician, dentist, veterinary surgeon or retail druggist who is in possession of any drug for a medicinal purpose,
- (c) a person who obtains the drug for a medicinal purpose from, or pursuant to a prescription of, a physician, dentist or veterinary surgeon,
- (d) a person authorized by the Minister or the regulations to be in possession of the drug, or
- (e) a person who is acting for any person mentioned in paragraph (a), (b), (c), or (d),

who has in his possession any drug is guilty of an offence and is liable

- (f) upon summary conviction to imprisonment for a term of not less than six months and not more than eighteen months, or

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(g) upon conviction on indictment, to imprisonment for a term of not less than six months and not more than seven years,
and notwithstanding anything in the *Criminal Code* or in any other statute or law, the Court has no power to impose less than the minimum penalty prescribed in this section.

The first group of paragraphs contains clauses modifying the subject; the subject is universal — *every person* — but an area is withdrawn by the exceptions listed. The last two paragraphs contain predicate modifiers. The concluding words beginning *and notwithstanding* form a distinct sentence and could have been added by a separate section or subsection. The lettering is continued with (f) and (g) so that there will not be two paragraphs lettered (a) in the same section.

The affairs of the bank shall be audited by two auditors appointed in accordance with this section each of whom at the time of his appointment is an accountant who

- (a) is a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of the Province of Quebec,
- (b) is ordinarily resident in Canada, and
- (c) has practised his profession in Canada continuously during the six consecutive years immediately preceding his appointment.

Here we have a passive verb *shall be audited* and a converted subject *auditors*, modified by the clause *each of whom ... is an accountant*; the word *accountant* is in turn subject to modification by three clauses. The subject of each clause is *who* and is outside the enumeration.

Every bank that fails

- (a) to make a return required to be made by it under this Act, or
- (b) to furnish to the Minister any information required to be furnished by it under subsection 91(1),

in the form and manner, within the time and containing the information prescribed by or pursuant to this Act, is liable to a penalty of fifty dollars for each day after the expiry of the time so prescribed for making the return or furnishing the information during which the failure continues.

Here the subject is modified by two clauses that describe offences. The subject and predicate of the sentence are *Every bank... is liable*. The verb *fails* is outside the paragraphs; in the one case it has the infinitive *to make* as object and in the other *to furnish*. The phrase *in the form and manner* applies to both paragraphs; if the section were written without paragraphs there would be doubt whether this phrase applied to both verbs *fails to make* and *fails to furnish* or only to the latter.

In the following example we again have two clauses modifying the subject.

Any one who is

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- (a) the owner or a person in lawful possession of property, or
- (b) a person authorized by the owner or by a person in lawful possession of property,

may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

The subject and predicate of each clause are outside the paragraphs and are applicable to both.

In the following a converted subject is modified by two clauses.

A warrant may be executed by a person who is

- (a) the peace officer named in the warrant, or
- (b) one of the peace officers to whom it is directed, whether or not the place in which the warrant is to be executed is within the territory for which the person is a peace officer.

It would be difficult to write the above example in the active without getting tangled up in the word *warrant*. As it is, the section begins with *a warrant* and the reference to *the warrant* in the rest of the sentence is clear.

PREDICATES

Two or more predicates may be conveniently set out in paragraphs as follows:

The Corporation may out of its capital, out of the reserve fund established under section 30 of the *Central Mortgage and Housing Corporation Act*, or out of moneys appropriated by section 22 for the purpose

- (a) purchase all right or interest of the holder of an insured loan and take an assignment of the mortgage and other security taken in respect thereof; and
- (b) make loans to an approved lender on such terms and conditions, including the rate of interest, as the Corporation may determine upon the security of an assignment of or an agreement to assign insured loans held by the approved lender.

Here, each predicate has its own modifiers and as written above is easier to grasp than if it were one piece.

Every public servant who invents an invention

- (a) shall inform the appropriate Minister of the invention and shall furnish to him such information and documents with respect thereto as he requires;
- (b) shall not file outside Canada an application for a patent in respect of the invention without the written consent of the appropriate Minister; and
- (c) shall, in any application in Canada for a patent in respect of the invention, disclose in his application that he is a public servant.

In the above example it is better to include *shall* in each paragraph than to insert it at the beginning.

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In the following example the empowering *may* is used rather than the commanding *shall*.

The bank may

- (a) deposit money with the Bank of Canada and with any chartered bank;
- (b) deposit money with banks outside Canada, if so authorized by the board of directors; and
- (c) borrow money from the Bank of Canada and from any chartered bank and give security for the payment thereof.

In the following example we have two predicates, but a more complicated case.

Where an accused corporation does not appear pursuant to a summons and service of the summons upon the corporation in accordance with subsection (4) of section 441 is proved, the magistrate

- (a) may, if the charge is one over which he has absolute jurisdiction, proceed with the trial of the charge in the absence of the accused corporation, and
- (b) shall, if the charge is not one over which he has absolute jurisdiction, hold a preliminary inquiry in accordance with Part XV.

There is one case applicable to both predicates, and a special case for each. *Where an accused corporation does not appear*, applies to both predicates; but there is an additional modifier in each paragraph. The paragraphing could be improved by taking *the magistrate* out of the opening words and beginning paragraphs (a) and (b) respectively with *the magistrate may* and *the magistrate shall*.

A justice who receives an information shall

- (a) hear and consider, *ex parte*,
 - (i) the allegations of the informant, and
 - (ii) the evidence of witnesses, where he considers it desirable or necessary to do so; and
- (b) issue, where he considers that a case for so doing is made out, a summons or warrant, as the case may be, to compel the accused to attend before him.

In the above example we again have two predicates, and one is further divided. The case is also complicated. The first case *where he considers it desirable or necessary to do so* applies to part of the first predicate, and the case *where he considers that a case for so doing is made out* applies only to the second predicate. It would be difficult to write this section putting the case first; it could not be done without doubling its length and perhaps writing two or three subsections.

In the following examples a predicate modifier is confined to one of the two predicates.

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A justice who hears the evidence of a witness pursuant to subsection (1) shall

- (a) take the evidence upon oath, and
- (b) cause the evidence to be taken in accordance with section 453 in so far as that section is capable of being applied.

No person shall

- (a) make a false or misleading statement tending to discredit the business, wares or services of a competitor;
- (b) direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his wares, services or business and the wares, services or business of another.

Without the paragraphing in the first example the words beginning *in accordance with* could be taken to apply to both predicates; and in the second the words *in such a way* could be read as relating also to paragraph (a).

Where a person is alleged, by a verdict upon a coroner's inquisition, to have committed murder or manslaughter but he has not been charged with the offence, the coroner shall

- (a) direct, by warrant under his hand, that the person be taken into custody and be conveyed, as soon as possible, before a justice, or
- (b) direct the person to enter into a recognizance before him with or without sureties, to appear before a justice.

Here there are two alternative predicates. The word *direct* is better in the paragraphs than outside; if outside, the conjunction *or* would be connecting a clause to a phrase. The case here consists of two clauses connected by *but*.

Many predicates may be joined in one enactment; if written in one piece it is difficult to comprehend, but is more readily grasped if broken up.

On the hearing of an appeal against a conviction, the court of appeal

- (a) may allow the appeal where it is of the opinion that
 - (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
 - (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
 - (iii) on any ground there was a miscarriage of justice;
- (b) may dismiss the appeal where
 - (i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment,
 - (ii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a), or
 - (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (ii) of paragraph (a) the

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appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred;

- (c) may refuse to allow the appeal where it is of the opinion that the trial court arrived at a wrong conclusion as to the effect of a special verdict, and may order the conclusion to be recorded that appears to the court to be required by the verdict, and may pass a sentence that is warranted in law in substitution for the sentence passed by the trial court; or
- (d) may quash a sentence and order the appellant to be kept in safe custody to await the pleasure of the Lieutenant-Governor where it is of the opinion that, although the appellant committed the act or made the omission charged against him, he was insane at the time the act was committed or the omission was made, so that he was not criminally responsible for his conduct.

There are four separate enactments, and a special case for each. It would be impossible to state the four cases first and follow with four rules. Four separate subsections could be written, but the words *on the hearing of an appeal against a conviction* would have to be repeated in each. By combining the rules into one, repetition is avoided, and we have enumerated in one place the things that a court may do on an appeal. Paragraphs (a) and (b) are further subdivided; in each there are in reality three alternative cases.

In the following example we have again double paragraphing, this time in the predicate.

No person, being aboard a foreign fishing vessel or being a member of the crew of or attached to or employed on a foreign fishing vessel shall in Canada or in Canadian territorial waters

- (a) fish or prepare to fish,
- (b) unload, land or trans-ship any fish, outfit or supplies,
- (c) ship or discharge any crew member or other person,
- (d) purchase or obtain bait or supplies or outfits, or
- (e) take or prepare to take marine plants

unless he is authorised to do so by

- (f) this Act or the regulations,
- (g) any other law of Canada, or
- (h) a treaty.

The first five paragraphs are predicates, governed by a common subject; the last three paragraphs are predicate modifiers applicable to each predicate. There would be ambiguity if the paragraphing were omitted.

We have seen several examples of how paragraphing can confine a modifier to one paragraph; it can also be used to indicate clearly that one modifier relates to all paragraphs. For example

Notwithstanding subsection (1), the Minister of Finance, with the approval of the Governor in Council, may, from time to time,

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- (a) make loans to the Authority out of money in the Consolidated Revenue Fund, or
- (b) guarantee repayment of the principal of and interest on money borrowed by the Authority,

for the purpose of repaying money that has been borrowed under this Act.

Here, the phrases *from time to time* and *for the purpose of* clearly apply to both predicates. If the section were written as one piece the former phrase might be regarded as applying only to the predicate *make loans* and the latter phrase to the predicate *guarantee repayment*.

PREDICATE MODIFIERS

Two or more predicate modifiers may be set out in paragraphs.

The rate of interest prescribed under subsection (1) shall not exceed the interest rate on long term Government bonds

- (a) by more than two and one-quarter per cent in respect of loans made under Part I;
- (b) by more than two and one-quarter per cent in respect of loans made under section 15;
- (c) by more than one-half of one per cent in respect of loans made under section 16; and
- (d) by more than one and one-half per cent in respect of loans made under section 17.

In the foregoing example *or* could be used to connect the modifiers.

A special general meeting of the shareholders of the bank may be called at any time by

- (a) the directors of the bank or any four of them, or
- (b) any number not less than twenty-five of the shareholders, acting by themselves or their proxies, who are together owners of at least one-tenth of the paid-up capital stock of the bank;

the directors or shareholders shall give six weeks' previous public notice of the meeting, specifying therein the object of the meeting, and the meeting shall be held at the place where the head office of the bank is situate.

Here, the predicate has two modifying phrases in the alternative. The concluding words could be a separate subsection, or even two. The two clauses can conveniently be joined because the subject-matter of the second is closely related to that of the first. If written as separate sentences, the words *the meeting* would not suffice to identify the *special general meeting of the shareholders of the bank*.

The bank may purchase any real or immovable property offered for sale

- (a) under execution, or in insolvency, or under the order or decree of a court, or at a sale for taxes, as belonging to any debtor to the bank,
- (b) by a mortgagee or other encumbrancer, having priority over a mortgage or other encumbrance held by the bank, or

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- (c) by the bank under a power of sale given to it for that purpose, notice of such sale by auction to the highest bidder having been first given by advertisement for four weeks in a newspaper published in the county or electoral district in which such property is situate,

in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property that it may so purchase, and may acquire title thereto as any individual, purchasing at a sheriff's sale or sale for taxes or under a power of sale, in like circumstances could do, and may take, have, hold and dispose of the same.

Here the predicate is modified by many phrases, and it clarifies the section to set them out in paragraphs. The case is more conveniently put at the end than at the beginning. The concluding portion *and may acquire title thereto* could form a separate section, but then the word *thereto* would not do. As written the meaning of *thereto* is clear, but it would not be clear if placed in another section.

Subject to this Act, an allowance is payable to

- (a) any male veteran who has attained the age of sixty years,
- (b) any female veteran or widow who has attained the age of fifty-five years,
- (c) any veteran or widow who, in the opinion of the District Authority,
 - (i) is permanently unemployable because of physical or mental disability, or
 - (ii) is, because of physical or mental disability or insufficiency, combined with economic handicaps, incapable and unlikely to become capable of maintaining himself or herself, and
- (d) an orphan,

who is resident in Canada.

By dividing into paragraphs, the words *who is resident in Canada* can be stated once only instead of five times. The phrases are adverbial, but the noun in each phrase has its own modifying clause or clauses.

Adverbial clauses modifying the predicate may be set out in paragraphs.

A loan to a co-operative housing association is not insurable unless

- (a) the instrument of incorporation of the co-operative housing association and its by-laws are approved by the Corporation;
- (b) the Corporation is satisfied that
 - (i) in the case of a project that will continue to be owned and managed by the co-operative association after completion of construction, at least eighty per cent of the family housing units of the project will be occupied by members or shareholders of the co-operative association; or

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- (ii) in the case of a project consisting of houses that on completion of construction are to be conveyed to members or shareholders of the association, at least eighty per cent of the members or shareholders will each own a house; and
- (c) in the first instance, repayment of the loan is secured by a first mortgage on all the family housing units in the project.

In the foregoing example, all the clauses following *unless* form the case, and some of the clauses contain further clauses. Without paragraphs, the section would be hard to read, and certainly *unless* would have to be repeated; and if written as one piece with *unless* repeated, the last *and* might be read disjunctively. As written, it is clear that all of the conditions specified in (a), (b) and (c) must be complied with.

In the following example there are alternative conditions.

No payment shall be made under subsection (1) unless

- (a) at the time of the conveyance of the property to the Corporation the property is unoccupied, or
- (b) the property is occupied by such person and under such terms and conditions as may be determined by regulation.

Without the paragraphs the phrase *at the time of conveyance* might be construed to relate to the second clause.

It is not necessary to have a separate paragraph for each clause. For example:

No contract shall be entered into pursuant to subsection (1) unless

- (a) the project is completed and is built in an area satisfactory to the Corporation and in accordance with standards of construction approved by the Corporation, and
- (b) the project consists of eight or more family housing units and is designed to provide housing accommodation of a size and type prescribed by the Corporation.

Here there are actually four clauses, but only two paragraphs.

In the following example there are three alternative cases, and many words are saved by paragraphing.

Where it appears from the original or a copy of a bill of lading, customs form, commercial invoice or other document (hereinafter called a "shipping document") that

- (a) goods were shipped or sent from Canada or came into Canada,
- (b) a person, as shipper, consignor or consignee, shipped or sent goods from Canada or brought goods into Canada, or
- (c) goods were sent to a destination or person other than as authorized in any export or import permit relating to the goods,

the shipping document is admissible in evidence in any prosecution under this Act in respect of those goods and is *prima facie* proof of any of the facts set out in paragraph (a), (b) or (c) appearing therefrom.

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The words *where it appears that* are read into each paragraph. The opening words contain a definition; the words *shipping document* are inserted so as to make it unnecessary to repeat the whole range of documents in the concluding words.

In the following example paragraphing of phrases within the case and of the objects of the verb in the case does much to make it easier to read a rather complex provision.

The rights and powers of the bank do not have priority over an interest or right acquired in, on or in respect of the property covered by security given under this section unless, prior to

- (a) the registration of such interest or right, or
- (b) the registration or filing of the deed or other instrument evidencing such interest or right, or of a caution, caveat or memorial in respect thereof,

there has been registered or filed in the proper land registry or land titles office or office in which are recorded the rights, licences or permits referred to in this section,

- (c) an original of the instrument giving the security,
- (d) a copy of the instrument giving the security, certified by an officer or employee of the bank to be a true copy, or
- (e) a caution, caveat or memorial in respect of the rights of the bank;

and every registrar or officer in charge of such proper land registry or land titles or other office to whom a document mentioned in paragraph (c), (d) or (e) is tendered, shall register or file the same according to the ordinary procedure for registering or filing within such office documents that evidence liens or charges against, or cautions, caveats or memorials in respect of claims to interests in or rights in respect of any such property and subject to payment of the like fees; but this subsection does not apply if the provincial law does not permit such registration or filing of the tendered document.

The concluding words could be a separate sentence.

In the following example the modifiers of the noun in an adverbial phrase are set out in paragraphs.

Subject to the provisions of this Act and the regulations, from and after the first day of January, nineteen hundred and fifty-two, a monthly pension of forty dollars may be paid in respect of every person who

- (a) has attained the age of seventy years, and
- (b) has resided in Canada for the twenty years immediately preceding the day on which his application is approved, or, if he has not so resided,
 - (i) has been present in Canada prior to those twenty years for an aggregate period at least equal to twice the aggregate periods of absence from Canada during those twenty years, and
 - (ii) has resided in Canada for at least one year immediately preceding the day on which his application is approved.

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The object of the predicate may be set out in paragraphs.

The Governor in Council may, by regulation and on such terms and conditions as he may prescribe, exempt from the operation of this section,

- (a) a person who
 - (i) is employed as a radio operator on a radio station in Canada,
 - (ii) holds a valid Canadian certificate of proficiency, or other authority to operate a radio station issued by the Minister, or an equivalent certificate or authority issued by the country of which he is a citizen, and
 - (iii) is a citizen of a country that grants reciprocal permission to Canadian citizens to be employed as radio operators in that country or is a landed immigrant within the meaning of the *Immigration Act*; and
- (b) a person who is employed as a radio operator on a radio station in Canada by the government of another country or any agency thereof in consequence of a joint defence arrangement with the Government of Canada.

Any warehouse receipt or bill of lading acquired under subsection (1) vests in the bank, from the date of the acquisition thereof,

- (a) all the right and title to the warehouse receipt or bill of lading and to the goods, wares and merchandise covered thereby of the previous holder or owner thereof, and
- (b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom the goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of the goods, wares and merchandise.

In each of the above examples, an involved object is necessary to complete the action of the verb.

The bank shall mail to each person

- (a) to whom a debt referred to in section 109 is payable,
- (b) to whom or at whose request an instrument referred to in section 110 was issued, certified or accepted, and
- (c) to whom a dividend referred to in section 111 is payable,

at his recorded address, a notice in writing stating that the debt, instrument or dividend, as the case may be, remains unpaid.

In the above example paragraphing saves repetition of *at his recorded address* and clearly sets out the persons to whom the notice is to be sent. The enumerated persons are indirect objects of the predicate.

In the following example the object of the verb has five alternative modifying clauses.

No person shall sell an article of food that

- (a) has in or upon it any poisonous or harmful substance;

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- (b) is unfit for human consumption;
- (c) consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance;
- (d) is adulterated; or
- (e) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions.

And in the following a preposition in an adverbial phrase takes three alternative objects.

The seizure and detention may be effected upon the order of,

- (a) a judge of any court;
- (b) a magistrate or justice of the peace having the power of two justices of the peace; or
- (c) the collector of customs at the city of Belleville.

THE CASE

The device of paragraphing is frequently resorted to in setting out the case. In the following example there are six alternative cases.

Where the interest in any share of the capital stock is transmitted by or in consequence of

- (a) the death, lunacy, bankruptcy, or insolvency of any shareholder,
- (b) the marriage of a female shareholder, or
- (c) any lawful means, other than a transfer according to this Act,

the transmission shall be authenticated by a declaration in writing as provided in this section or in such other manner as the directors of the bank require.

In the following example the case contains two principal verbs and a verb modifier is placed outside the two paragraphs so as to be applicable to both.

Where, under section 36,

- (a) shares are offered but not subscribed for or rights in respect of shares are provided but not exercised, or
- (b) shares or fractions of shares are not offered and rights in respect thereof are not provided,

such shares may be disposed of in such manner and on such terms as the directors determine, except that no share shall be sold at less than par.

In the following example there are two principal clauses, and a number of alternative cases for the second clause are set out in paragraphs at the end.

Any one who, upon reasonable and probable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information where it is alleged that

- (a) the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

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- (i) is or is believed to be, or
- (ii) resides or is believed to reside, within the territorial jurisdiction of the justice;
- (b) the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;
- (c) the person has anywhere unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or
- (d) the person has in his possession stolen property within the territorial jurisdiction of the justice.

Sometimes the subordinating conjunction is the only word that two or more cases have in common, as in the following:

Where,

- (a) service of a summons is proved and the accused does not appear, or
- (b) it appears that a summons cannot be served because the accused is evading service,

a justice may issue a warrant in Form 8.

In the following example an involved case is set out partly at the beginning and partly at the end.

Where a person who is confined in a prison is required

- (a) to attend at a preliminary inquiry into a charge against him,
- (b) to stand his trial upon a charge that may be tried by indictment or on summary conviction, or
- (c) to attend to give evidence in a proceeding to which this Act applies,

a judge of a superior court of criminal jurisdiction or of a county or district court may order in writing that the prisoner be brought before the court, judge, justice, or magistrate before whom his attendance is required, from day to day as may be necessary, if

- (d) the applicant for the order sets out the facts of the case in an affidavit and produces the warrant, if any, and
- (e) the judge is satisfied that the ends of justice require that an order be made.

It is sometimes said that an *if* clause (condition) must follow immediately the *where* clause (case). In the foregoing example that could not be done; the preceding words are necessary to explain the meaning of paragraphs (d) and (e).

Paragraphs may be further divided into subparagraphs, as in the following example:

Where

- (a) a fine, penalty or forfeiture is imposed
 - (i) in respect of a violation of a revenue law of Canada,

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- (ii) in respect of a breach of duty or malfeasance in office by an officer or employee of the Government of Canada, or
 - (iii) in respect of any proceedings instituted at the instance of the Government of Canada in which that government bears the costs of prosecution; or
- (b) a recognizance in connection with proceedings mentioned in paragraph (a) is forfeited,

the proceeds of the fine, penalty, forfeiture or recognizance belong to Her Majesty in right of Canada and shall be paid by the person who receives them to the Receiver General of Canada.

In the following example two cases are set out at the end in the alternative.

No conviction or order shall be removed by *certiorari*

- (a) where an appeal was taken, whether or not the appeal has been carried to a conclusion, or
- (b) where the defendant appeared and pleaded and the merits were tried, and an appeal might have been taken, but the defendant did not appeal.

In the following there are two cumulative clauses constituting one case; the conjunction *where* is not repeated as in the previous example.

No warrant of committal shall, or *certiorari* or *habeas corpus*, be held to be void by reason only of any defect therein, where

- (a) it is alleged in the warrant that the defendant was convicted, and
- (b) there is a valid conviction to sustain the warrant.

In the following similar examples, the cases are alternative, and the conjunction *where* could be placed within or outside the paragraphs.

The Corporation may seize and detain any vessel at any place within the limits of the province of Ontario, where

- (a) any sum is due in respect of the vessel for rates or for commutation of rates and is unpaid; or
- (b) the master, owner or person in charge of the vessel has violated a provision of this Act or a by-law in force under this Act.

The Corporation may seize and detain any goods, where

- (a) any sum is due for rates in respect of such goods and is unpaid; or
- (b) a provision of this Act or of a by-law in force under this Act has been violated in respect of such goods.

In the following examples alternative cases are set out at the beginning or end of the sentence.

The Board may suspend for such period as it thinks advisable or may cancel a commission or certificate where it finds that the holder thereof is guilty of

- (a) gross negligence or corrupt practice in carrying out his duties as a surveyor;
- (b) certifying to false returns of a survey;

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- (c) certifying as his survey a survey made by another surveyor; or
- (d) making a survey in which he has used a measure that is not regulated and verified in accordance with this Act.

The Comptroller shall reject a requisition if he is of the opinion that the payment

- (a) would not be a lawful charge against the appropriation,
- (b) would result in an expenditure in excess of the appropriation, or
- (c) would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.

Where the Comptroller

- (a) declines to make a payment,
- (b) disallows an item in an account, or
- (c) refuses to give a certificate required by this Act,

the appropriate Minister of the department concerned may report the circumstances to the Treasury Board for its decision, and the Board may confirm or overrule the action of the Comptroller and give such directions as are necessary to carry out its decision.

A compound case, where the clauses or other modifiers are cumulative, can be simplified by paragraphing. For example:

No certificate shall be granted under this section until the Treasury Board is satisfied that

- (a) the organization complies with the requirements of subsection 79(1), and
- (b) the financial status and condition of the organization are such that
 - (i) it is able to meet all of its obligations, and
 - (ii) upon the grant of the certificate the organization will be able to satisfy all the requirements devolving on it under this Act;

and any certificate granted by the Treasury Board may contain, or may be amended to include, any limitations or conditions that the Treasury Board may deem necessary or advisable.

This involved account of the case would be difficult to read without the paragraphs and subparagraphs.

Further examples of cumulative clauses are:

Subject to subsection (2), in a prosecution for the sale of any article in contravention of this Act or the regulations, if the accused proves to the satisfaction of the court or judge that

- (a) he purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time he purchased it, and
- (b) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations,

the accused shall be acquitted.

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Where a person is prosecuted under this Act for having manufactured an adulterated food or drug for sale, and it is established that

- (a) the food or drug has by regulation been declared to be adulterated if any prescribed substance has been added thereto, and
- (b) such person had in his possession or on his premises any such prescribed substance,

the onus of proving that the food or drug was not adulterated by the addition of such substance lies on the accused.

Where, prior to the coming into force of this Act,

- (a) a special commissioner was appointed under section 7 of the *Combines Investigation Act* to conduct an inquiry or investigation, and
- (b) no report had been made under subsection 27(3) of that Act,

the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed.

Frequently a sentence contains a number of cases with a special enactment for each; paragraphing assists in setting them out, and saves much repetition.

The bank may hold real or immovable property for a period of seven years

- (a) in the case of property acquired or held for its own use, from the day on which it ceases to be required for its own use, as determined by the directors, and
- (b) in the case of other property, from the day on which it acquired the property,

and forthwith after the expiry of that period the bank shall sell or otherwise dispose of the property absolutely so that the bank no longer has, directly or indirectly, any interest or control in respect thereof except by way of security.

In the foregoing example the subject and predicate come first, followed by two paragraphs, each containing a special case and its own predicate modifier.

In the following we have different predicates for different cases.

When all the evidence has been taken by the justice he shall,

- (a) if in his opinion the evidence is sufficient to put the accused on trial,
 - (i) commit the accused for trial by warrant in Form 17, or
 - (ii) order the accused, where it is a corporation, to stand trial in the court having criminal jurisdiction; or
- (b) discharge the accused, if in his opinion upon the whole of the evidence no sufficient case is made out to put the accused on trial.

Where a justice is satisfied that anything that has been seized under section 431 or under a warrant issued pursuant to section 429 will not be required for any purpose mentioned in subsection (1) or (2), he may

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- (a) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or
- (b) if possession of it by the person from whom it was seized is unlawful,
 - (i) order it to be returned to the lawful owner or to the person who is entitled to possession of it, or
 - (ii) order it to be forfeited or otherwise dealt with in accordance with law, where the lawful owner or the person who is entitled to possession of it is not known.

A judge of, or a judge presiding in a superior court of criminal jurisdiction may, upon application,

- (a) before an accused is committed for trial,
 - (i) admit the accused to bail if a justice has no power to grant bail or if bail has been refused by a justice, or
 - (ii) vary the amount of bail fixed by a justice, or
- (b) where an accused is committed for trial, vary an order for bail fixed under subsection 463(3) by a judge of a county or district court or a magistrate.

Mathematical sections are easier to understand if they are divided into paragraphs.

An association shall not lend any money to, nor invest in the securities of, any member if

- (a) the aggregate of
 - (i) the total amount of loans made by the association to the member, less the market value of government securities, municipal securities and school securities, if any, pledged as security for any such loans, and
 - (ii) the total amount invested by the association in the securities of the member

exceeds ten per cent of the aggregate of the paid-up capital of the association and the total amount of money on deposit with the association, or

- (b) the making thereof would increase the first mentioned aggregate to more than ten per cent of the second mentioned aggregate.

The aggregate of

- (a) the total amount borrowed by an association and outstanding,
- (b) the total amount of money on deposit with the association, and
- (c) all moneys of which the repayment of the principal or payment of interest is guaranteed by the association,

shall not at any time exceed ten times the aggregate of

- (d) its paid-up capital,
- (e) the amount of its guarantee fund, and
- (f) the amount of its surplus.

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Every individual liable to pay tax under Part I of the *Income Tax Act* for a taxation year shall pay an Old Age Security tax for the year equal to the lesser of

- (a) two per centum of the taxpayer's taxable income for the year, or
- (b) sixty dollars.

IMPROPER PARAGRAPHING

It is sometimes erroneously thought that a sentence is correctly paragraphed if the opening words, plus any one of the paragraphs, plus the concluding words, if any, make a sentence. All the words when read from beginning to end without regard to the paragraph designations must be a complete and correct sentence, whether simple, compound or complex. This must be, because all the paragraphs are connected grammatically to each other by the conjunction *and* or *or*. Each paragraph must be grammatically connected to the one before it and the one after it.

The following rules must therefore be observed:

1. The paragraphs must all have the same grammatical value and function.
2. The paragraphs must be connected grammatically to each other and to the same word or group of words in the general opening lines — the umbrella words.
3. Every modifier in the paragraph must be a modifier of something in that paragraph, or of the umbrella words.

In the following example, the paragraphs are not of equal grammatical value:

No licence shall be revoked or suspended

- (a) except with the consent of the holder, or
- (b) unless notice of intention to suspend or revoke has been given to the holder and he has been given an opportunity to be heard.

Paragraph (a) is a phrase; paragraph (b) is a clause. These two grammatical elements cannot be joined by the co-ordinating conjunction *or*. Written without paragraphing the *or* would not be there, and the phrase would normally come first.

Except with the consent of the holder, no licence shall be revoked or suspended unless notice of intention, etc.

In the following example modifiers in the paragraphs violate rules 2 and 3.

No person shall keep on any premises a quantity of explosive exceeding

- (a) twenty-five pounds, within 100 feet of any building, or
- (b) one hundred pounds, within a fire limit.

The paragraphs follow the participle *exceeding*; therefore everything within (a) and (b) must be within the object of *exceeding*. The prepositional phrase *within 100 feet* etc. in (a) has no function in the object of the participle; it belongs exclusively to the verb *keep* in the main clause and it does not connect with (b). Hence, this phrase closes the main clause. Paragraph (b)

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cannot be read as a continuation of the main clause without re-inserting the main clause, but this cannot be done. The door is closed, as appears clearly if the sentence is written without paragraph designations. The structure could be corrected by striking out *exceeding* and writing:

- (a) if it exceeds 25 pounds, within 100 feet etc., or
- (b) if it exceeds 100 pounds, within a fire limit

Now we have in each of (a) and (b) a clause and phrase modifying *keep*; (a) and (b) are equal parts of the main clause.

Another example

No person shall keep on any premises a quantity of explosive that

- (a) is more than 25 pounds in weight unless it is stored etc., or
- (b) is more than 100 pounds in weight within a fire district.

Here the word *that* introduces a definition of *quantity*. Hence everything in (a) and (b) must belong within the definition. The concluding clause in (a) and the concluding phrase in (b) do not; they are modifiers of the main verb *keep*.

We can correct this by giving the main verb two alternative modifiers.

Unless

- (a) it is stored ..., if more than 25 pounds, or
- (b) it is outside a fire district, if more than 100 pounds.

Another example

Every person who

- (a) in an application makes a false statement is guilty of an offence, and
- (b) is ineligible for a further grant.

In paragraph (a) the first seven words modify the word *who*, but the next five words constitute the predicate of *person*; and in paragraph (b) we have another predicate of person. This could be written

Every person who makes a false statement in an application

- (a) is guilty of an offence, and
- (b) is ineligible for a further grant.

Another example

Every barrister who was admitted to the bar

- (a) prior to the 1st day of January, 1950 shall pay a fee of \$100, and
- (b) on or after that day shall pay a fee of \$200.

Paragraphs (a) and (b) are in part a modifier of *admitted* and in part the predicate for *barrister*. The following re-write would also not be correct:

Every person who

- (a) was admitted to the bar prior to the 1st day of January, 1950, shall pay a fee of \$100, and
- (b) was admitted to the bar on or after that day shall pay a fee of \$200.

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This provision could be written as two separate and complete sentences connected by *and*, or could be tabulated as follows:

Barristers shall pay the following fees:

- (a) if admitted \$100, and
- (b) if admitted \$200.

Or as follows:

A barrister shall pay

- (a) a fee of \$100 if he was admitted, etc., or
- (b) a fee of \$200 if he was admitted, etc.

Insertion of a new co-ordinate clause in a paragraph destroys the enumeration.

A student using the library

- (a) shall not damage any book and if he does so he is liable for the cost of repair,
- (b) shall not make any unnecessary noise in the library so as to disturb others who may be using the library, and
- (c) shall promptly return books borrowed by him.

Paragraph (a) is defective because it includes a complete new sentence; it does not now connect with (b). This clearly appears if written

A student using the library shall not damage any book and if he does so he is liable for the cost of repair and shall not make any unnecessary noise.

The clause in (b) *who may be using the library*, is correct, because it is a subordinate clause modifying *others* in that clause.

In the following example taken from the former *Citizenship Act* we have three separate sentences, connected not by thought but only by having some words in common.

Where in any Act of the Parliament of Canada any provision is made applicable in respect of

- (a) a "natural-born British subject" it shall apply in respect of a "natural-born Canadian citizen",
- (b) a "naturalized British subject" it shall apply in respect of a "Canadian citizen other than a natural-born Canadian citizen", or
- (c) a "Canadian national" it shall apply in respect of a "Canadian citizen"

under this Act.

The opening and concluding words make a correct sentence when read with any one of the paragraphs, so that we have three independent sentences. They cannot, however, all be put together in this fashion to make one compound sentence.

In each of the paragraphs there is an object of the prepositional phrase *in respect of* and a predicate for *provision*, represented by *it*; and at the end

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there is a phrase *under this Act* modifying something in each of the paragraphs. Where there are concluding words after the paragraphs they should be an addition to the general opening words, or like umbrella words, they should cover the whole of every paragraph and not merely some element in them.

It is difficult to write three enactments like this as one enactment. It would be better to write three separate sentences notwithstanding the repetition of words. If repetition is to be avoided it could be done as follows:

Where in any Act of the Parliament of Canada any provision is made applicable in respect of a "natural-born British subject", a "naturalized British subject" or a "Canadian national" it shall apply in respect of a "natural-born Canadian citizen", a "Canadian citizen other than a natural-born Canadian citizen" or a "Canadian citizen" under this Act respectively.

There is the same faulty construction in the following:

Except as otherwise provided in this Part, the provisions of this Act applicable

- (a) to bills of exchange apply to consumer bills,
- (b) to promissory notes apply to consumer notes.

If the words *the provisions of this Act applicable* were put at the beginning of each of the paragraphs (a) and (b) we would then have a complete sentence in each paragraph with a common modifier in the opening words.

One fairly reliable test of proper paragraphing is to read the provision aloud without reference to paragraphs or subparagraphs; if it does not make sense without speaking words that are not there, or if the provision cannot be read without stumbling and hesitating or without going back and re-reading portions of it, there is something wrong with it. It should read smoothly from beginning to end without reference to paragraphing or punctuation.

CHAPTER VIII

GENERAL

SECTIONS AND SUBSECTIONS

It is the practice to write each section and subsection in what is called one sentence. As a drafting guide, an instruction that a section or subsection should contain only one sentence means little, because a compound sentence is in reality two or more sentences connected by a co-ordinating conjunction or separated only by a semi-colon. The most that can be said is that each section or subsection should be *punctuated* as one sentence.

There is no reason in law why a section should not contain two or more enactments, each punctuated as a sentence. This practice, however, will tempt the draftsman to write text-book paragraphs and make the section difficult to read. There is also the danger that each sentence will move further and further away from the opening sentence so that by the time the draftsman reaches the end he is on an entirely new subject. The following, for example, was enacted as one section:

When a candidate has withdrawn after nomination day, and after the ballots are printed, the returning officer shall advise, by letter or telegraph, each deputy returning officer of his electoral district of such withdrawal. When time permits, a notice of the withdrawal shall be printed by the returning officer and distributed to each deputy returning officer. On polling day, each deputy returning officer shall post up a copy of the printed notice of withdrawal in a conspicuous place in his polling station. If time does not permit of the printing and the distribution of such notice, the deputy returning officer, upon being advised by letter or telegram, by the returning officer of the withdrawal of any candidate, shall himself prepare by hand a notice to that effect and post it up in a conspicuous place in his polling station. In any case the deputy returning officer shall, when delivering a ballot to each elector, inform such elector of the withdrawal of any candidate.

A provision such as the foregoing is difficult to read, and it would be difficult to refer to some ingredient of it in a cross-reference or an amending statute, because the sentences have no labels.

If two independent sentences are joined by a conjunction there should be a direct connection between the thought and subject-matters of the two.⁴ In some cases, where there is a connection in subject-matter but somewhat remotely in thought, a semi-colon may be used.

Each sentence is a separate enactment and should, so far as possible, be self-contained.

4. See the examples *infra* pp. 78-79

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26. Where a witness to be examined under this Act objects to the taking of an oath, he may make a solemn declaration.

27. Any solemn affirmation and declaration *so* made shall be of the same force and effect and shall entail the same consequences as an oath taken in the usual form.

28. Every *such* oath or affirmation shall be in the Forms A and B respectively in the Schedule to this Act.

29. Any person examined *as aforesaid* who wilfully gives false evidence shall be liable to the penalties of perjury.

In the foregoing example, taken from an actual statute, sections 27, 28 and 29 are not self-contained; there is in each an indefinite reference to something outside the section. This practice is not good, because it is inexact and because an amendment to one of the sections or the insertion of another section by amendment could spoil subsequent sections or make it necessary to amend them too.

Even if the foregoing provisions were written as four subsections of one section, it would still be better to make clearer references. Other vague referential words of the same character and to be avoided are *aforesaid*, *thereupon*, *in such case*, *hereinafter*, *hereinbefore*, *following*.

It is a matter of judgment whether two or more sentences should be combined into a compound-complex sentence or written as separate sentences. There are occasions when it is better to combine sentences, if the result is not unduly long or complicated. It is done to avoid repetition or the use of words referring to something outside the section.

Thus, the example given above might be re-written as follows:

26. Where a witness to be examined under this Act objects to the taking of an oath, he may make a solemn declaration.

27. A solemn affirmation or declaration made pursuant to this Act

(a) shall be in Form A or B respectively in the Schedule to this Act, and

(b) is of the same force and effect and entails the same consequences as an oath taken in the usual form.

28. A witness examined pursuant to this Act who wilfully gives false evidence is liable to the penalties of perjury.

In the following examples two or more sentences have been advantageously combined.

Each province constitutes one bankruptcy district *but* the Governor in Council may divide a district into two or more divisions.

A person desiring to obtain a licence to act as a trustee shall file with the Superintendent an application for a licence in such form as may be prescribed, *and*, when requested by the Superintendent, shall provide such security for the due and faithful performance of his duties in such form and amount as the Superintendent requires.

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The Superintendent shall make an investigation into the character and qualifications of any applicant for licence as the Superintendent deems advisable or expedient *and* shall report to the Minister the result of the investigation, together with his recommendation for or against the granting of the application and his reasons therefor.

A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt *and* the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

Where property of a bankrupt is held as a pledge, pawn, or other security, the trustee may give notice in writing of his intention to inspect the property, *and* the person so notified is not thereafter entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the property and exercising his right of redemption.

Where a member of a partnership becomes bankrupt, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner, *and* any release by the partner of the debt or demand to which the action relates is void.

For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, *and* he is entitled to vote only in respect of the balance, if any, due to him, after deducting the value of his security.

HEADINGS AND PARTS

It is frequently desirable to insert headings and sub-headings as a guide to the subject-matter of the Act. These are regarded as part of the Act, and may influence the interpretation of the sections under the heading. Headings should therefore be selected with care.

A heading should not form part of the text and should not be referred to in the text. The statute should remain a grammatical whole if all headings are deleted. Examples of improper use of headings are:

APPLICATIONS

15. A fee of five dollars shall be paid for *each*.

PROVISIONS APPLICABLE TO RAILWAY COMPANIES

16. Every application for the incorporation of *a company* shall be signed by at least twenty-five persons.

An Act may also be divided into Parts, either with or without an appropriate heading. It may be done to break up the Act by subject, as in the case of a book, for the purpose of assisting the reader in finding his way through it. Or it may be done for more technical reasons. For example, sometimes special definitions are necessary for a particular subject-matter and it is more convenient to set them out with the sections to which they apply than at the beginning or end of the statute. Again, division of an Act into Parts may facilitate cross-references; for example, an Act may impose two kinds of taxes

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and it may be convenient in the general sections to distinguish between taxes under Part I and those under Part II. An Act may be divided into different Parts applying to different classes of persons; thus, an Act relating to companies might have one Part applying only to railway companies, another applying only to telegraph companies, and so on; in each Part the word *company* can be used without having to specify each time the kind of company; alternatively, each Part could have its own definition of *company*.

There is no general rule for determining when an Act should or should not be divided into Parts. It has been said that an Act should be divided into Parts only where each Part might properly form the subject of another Act. That might be one instance where the division might usefully be made, but there are other instances where an Act can, and should, be so divided.

CROSS-REFERENCES

References to other sections should, where possible, be specific rather than general. A reference to another section by its number cannot be misconstrued, but a reference to another section by its subject-matter can. And, if figures are used for section numbers, the references are easier to find.

References to sections *following* or *preceding* should be avoided; Parliament may spoil the reference by inserting another section.

References to things *hereinbefore*, *hereinafter* should also be avoided. If specific sections are intended to be referred to, their numbers should be given; if the reference is generally to the whole Act or a Part, the reference should be to *this* Act or a specified Part.

Specific references are helpful not only to the reader but also to the draftsman. A bill may go through many drafts and each draft usually requires a re-numbering of sections; the chances of overlooking a reference are reduced if numbers are used. Also, if the bill is amended in Parliament either by adding or deleting a section, it must be re-numbered and cross-references must be changed. Section references are easier to find if figures are used.

Where there is a reference to a minor division of a section or subsection, care should be taken to see that the reference is correct. For example, if a section began

6. Every person who
 - (a) has applied for a pension, or
 - (b) has been paid a pension

a reference in another section to a *person referred to in paragraph 6(a)* would not strictly be correct because no person is referred to in that paragraph.

CHOICE OF WORDS

No rules govern the choice of words. The draftsman must, of course, find the right word or the best word, but what is right or what is best? If there is a choice between a long word and a short word, or between an uncommon

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word and a common word, the short or common should usually be preferred. An abstract noun often has more shades of meaning than the concrete.

Good dictionaries and other word books should always be at a draftsman's elbow and he should be satisfied that the sense in which he intends to use a word is current and is recognized by authoritative dictionaries. Words do change in meaning, but the draftsman should not innovate the changes; and he should not revive the obsolete or rejuvenate the archaic.

Foreign words should be avoided. Legal latin phrases can usually be replaced by English, although some have virtually become English like *per cent* and *habeas corpus*.

Technical terms may be used in technical statutes. For example, the *Weights and Measures Act* speaks of *amperes*, *ohms*, *coulombs*, *farads*. And a statute dealing with courts and legal procedure may refer to *quo warranto* and writs of *fieri facias*. Statutes dealing with bills of exchange, companies, banks, insurance, etc., must use technical terms accordingly. And words like *domicile*, *tenant*, *real property*, are also used in technical senses. It would be impossible to substitute words so that readers who are unfamiliar with the subject-matter will be able fully to understand the statute; and a draftsman must not be expected to do so. But even if a draftsman must use technical words and expressions, he should try to express himself as simply and clearly as possible.

The temptation to replace a verb by a noun derived from that verb plus another verb should be resisted. Thus, it would generally be better to say *assist*, rather than *come to the assistance of*. The action to be described is *assisting* rather than *coming*. If, however, there are other provisions aimed at the *coming*, then it might be desirable to use the longer form.

ARRANGEMENT

The arrangement of an Act is important. Again, no exact rules can be laid down — each Act is a special case — but the following general suggestions may be helpful.

1. The first section should be the short title.
2. The second section in Canadian Acts is normally the interpretation or definition section, although in some jurisdictions the definitions are put at the end of the Act.
3. Application sections, if any, usually follow the interpretation section. If the operation of the Act is substantially restricted as to area, persons, time or otherwise, an early indication is usually desirable, although minor restrictions might more suitably be placed at the end.
4. The first group of sections should express the leading theme of the statute. For example, the charging sections in a taxation statute, the incorporating sections in a corporation statute, the granting sections in a pension statute, the prohibitions in a penal statute, and so on. In other words, the first

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group of sections should, if possible, tell the reader what the statute is about, what its subject-matter is.

5. Administration provisions, or provisions to make the main theme effective, should follow. If the statute is one requiring licences to export, for example, the sections prohibiting export without a licence should be followed by the sections dealing with the application for and grant of licences.

6. Provision for making regulations should follow the administration provisions because they usually refer to matters mentioned in the leading provisions or the administration provisions.

7. Penal provisions (except in purely criminal statutes) should be placed towards the end of the Act.

8. Special legal provisions relating to evidence, trials, etc., should follow the penal provisions.

9. Temporary and transitional provisions should be at the end.

10. The final section should be the coming into force provision, if any.

11. Matters should be set out in the Act and in the individual sections in proper time sequence.

COPYING

It is dangerous to take a section out of one statute and insert it in another. A section taken out of its context may lose its meaning or may acquire a new meaning in another context. The draftsman should satisfy himself that the section to be copied will have the intended effect in the new statute and, if not, he should re-write it.

There is a tendency to copy statutes from other jurisdictions without making any alterations in the text. Faulty provisions are repeated as they stand; archaic or clumsy words or forms are retained. This habit merely perpetuates bad law. The draftsman should make whatever improvements he can, and certainly he should not copy anything that he himself would not write.

The justification given for copying statutes verbatim is that past and future judicial decisions can be applied to the new statute. This is not always a sound excuse. Draftsmen do not always go to the trouble of looking for the decided cases. There may be no cases, but, if there are, they may be of no value, or may even reveal defects in the statute. In any event the application or the relevancy of a judicial decision does not always depend upon an exact reproduction. It is the substance of the statute that is important and if the substance of the two statutes is the same, that may be enough. For example, if a draftsman were to convert a number of disconnected provisos into separate subsections, the relevancy of the judicial decisions would not be affected in the least.

It is not being suggested that a draftsman should never look at the legislation of other jurisdictions. On the contrary, it may be a great help to him to

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study the statute of another jurisdiction on the same subject, and the judicial decisions as well.

PUNCTUATION

No two people can agree on punctuation; hence little will be said about it here.

Two general rules may be helpful —

1. A section should not be over-punctuated so that the person reading it aloud must pause and hesitate unnecessarily or to the point of monotony.

2. Punctuation should not be used to convey meaning. If the force or scope of a modifier is determined by punctuation alone, the danger is great that a reader will misconstrue the section or that the printers will ruin it. Punctuation, judiciously used, will guide the reader through the sentence, help him sort out its elements and subconsciously prevent him from going astray; but the sentence should be so constructed that by omitting the punctuation the sentence is capable of being read correctly from beginning to end.

STYLE

A draftsman should, above all, strive to make his statute as readable as possible. His words are to be read by other people and he should help them and not place obstacles in their way.

There is nothing so discouraging as a long block of solid type. A page of unbroken type is enough to weary and challenge even the most astute minds. Ten to fifteen lines of solid type are usually quite enough; anything from fifteen to twenty-five lines should be re-examined; and anything over twenty-five lines should be broken up.

A statute should be divided into sections and subsections of modest length. If a section or subsection consists of a collection of sentences, it tends to become an essay or a treatise and is difficult to read and to understand. As previously indicated, there are occasions when two or more grammatical sentences can be conveniently combined by an appropriate conjunction, but care should be taken that the sentences so combined are short or that there are not too many of them, and unrelated sentences should not be combined.

A sentence that is long because it is grammatically involved should be re-examined and simplified; and often a compound-complex sentence can be broken up into two or more sentences that can themselves form separate sections or subsections.

Finally, the type can be broken up by the mechanical method of paragraphing, discussed in Chapter VII.

Instead of presenting the reader with a page of solid type, a draftsman can give him a page consisting of half a dozen or more distinctly numbered sections or subsections, some of which are broken up into indented paragraphs and subparagraphs. A glance at the page will reveal to an intelligent reader its subject-matter, and he can more easily follow the grammatical structure and grasp the meaning of the individual sections and subsections.

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As a further mechanical aid to the reader, appropriate headings and sub-headings can be inserted in the statute, and each section and subsection can be given a short marginal note.

LIMITATIONS

A draftsman does not always have a free hand. Included in the circumstances that affect language used by him are the following:

1. In preparing an amendment to a statute, a draftsman is always faced with the choice of retaining the language of the original enactment (except those portions that are to be changed) or writing the whole provision the way he would like to see it. The difficulty is that corresponding language may be found in other provisions that are not up for amendment, and the draftsman can hardly make changes in one section if corresponding changes are not going to be made in other sections.

2. Those whose business it is to determine the policy of the legislation or to pilot it through Parliament may have strong views on the language to be used in the statute. They may, for political or other reasons, disapprove of the way in which the policy of the legislation has been expressed, and the draftsman may have to find some other mode of expression, even though he does not consider it to be the best. Ministers also are naturally anxious to have amendments held to an absolute minimum, and it may not be possible for the draftsman to make what he considers to be improvements in the language of a statute.

3. Officials of the department that is to administer the statute may also have views on its language or form. Here again, the draftsman may have to make some compromise.

4. A bill must be passed by Parliament before it becomes law and it is for Parliament to say what the form and substance of the law is to be. A draftsman can only put his best recommendation forward, but the bill may be amended in Parliament in a way that, so far as form and expression are concerned, does not please him. The most that the draftsman can hope for is that before changes are made he will be consulted.

EMPHASIS

A compound or complex sentence expresses many ideas. In assembling them care should be taken to give them the correct emphasis. Some ideas are of first importance, while others are subordinate. The sentence must be so constructed that a subordinate idea does not detract from the main idea, and that a main idea is not placed in a subordinate position.

A person arrested shall be taken before a justice and charged with an offence not later than seven days after his arrest, unless the Attorney General has issued an order that the accused be further detained until the expiry of a period not exceeding twenty-one *days after his arrest, at the end of which period* the person arrested shall be taken before a justice and charged with an offence or released.

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The words *at the end of which period* lead one to think that something descriptive of the period or its end is to follow. These words have the force of a subordinating conjunction. But the clause that follows is not subordinate to the first; it ranks equally, and should be joined by a co-ordinating conjunction.

... period after his arrest, *and* at the end of *that* period, the person arrested shall be taken ...

An Ordinance respecting prairie fires provided that

Nothing in this Ordinance prevents any railway company or its employees from burning over the land held by it under its right of way ...

Written as follows it would be incorrect:

The provisions of this Ordinance do not apply to a railway company the employees of which may burn over lands held by the company ...

The words granting the permission have been subordinated. They are now in a relative clause describing the railway company, instead of in a main clause. It can be read as meaning that the Ordinance does not apply to a class of railway companies that has employees who under some law other than this Ordinance have permission to burn over the land.

A section of an Ordinance respecting fire prevention read as follows:

The Commissioner may by proclamation, establish fire limits within the boundaries of which no person shall erect or maintain any building or structure constructed of any material other than wood, brick, stone or metal.

There are two main ideas here. First, that the Commissioner may establish fire limits, and secondly that no person shall erect or maintain a building in a fire limit. If any of these ideas has a higher rating than the other, it would be the second. Yet that idea is subordinated to the first; it is set out as a description of the kind of a fire limit that may be established. Nowhere is there a prohibition against constructing or maintaining.

There should be a direct provision that

No person shall within a fire limit erect or maintain a building, etc.

The second idea could be subordinated to the first

No person shall within the boundaries of a fire limit established by the Commissioner by proclamation erect or maintain any building or structure, etc.

but there would then be doubt whether these words confer power on the Commissioner to establish fire limits, or whether they merely refer to fire limits that the Commissioner under some other provision has authority to establish.

What is in reality an independent clause should not be reduced in rank to a modifier within another clause. Thus, the following is defective

Every person who kindles a fire that runs at large is guilty of an offence

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No such fire can be kindled. At the moment it is kindled it has not yet run at large.

There should be an independent rather than a dependent clause

Every person who kindles a fire *and permits it to run at large* is guilty of an offence.

The past tense would correct the defect in logic.

Every person who kindled a fire that ran at large is guilty of an offence.

But this form would be more stringent as there would then be an offence if the fire escaped through no one's fault; and the emphasis is on the *kindling* rather than on the true mischief *running at large*.

CONJUNCTIONS

Co-ordinating conjunctions may be used only where the sentence elements to be joined are of equal grammatical value. The following provision is therefore defective.

(2) No licence or operating certificate shall be revoked or suspended under this section

(a) except with the consent of the holder thereof; or

(b) in any other case, unless notice of intention to suspend or revoke the licence or certificate has been given to the holder and he has been given a reasonable opportunity to be heard.

The error here is that the co-ordinating conjunction *or* has been used to join grammatical unequals. Paragraph (a) is a phrase and paragraph (b) is a clause; the two paragraphs are not parallel. Paragraph (a) could be construed as an elliptical clause with an elliptical conjunction — *except that it may be revoked* with the consent of the holder thereof, but then we would have a co-ordinate clause joined to a subordinate clause; again, unequals.

It is also questionable whether *except with* is correct. There is no previous *doing with* from which an exception is being made. What is required is a preposition of manner, such as *otherwise than with* or simply *without*. Paragraph (a) does not describe a *case*, so that (b) cannot be a provision for any *other case*. A better, and grammatically more correct form, would be

No licence or technical construction and operating certificate shall be revoked or suspended under this section without the consent of the holder thereof unless notice of intention ... has been given ...

If a tabular form is preferred, both paragraphs should be converted to clauses

(a) unless the holder thereof has consented thereto, or

(b) unless notice of intention ... has been given ...

In the following example the same error is made with *and*:

A consumer bill is a bill of exchange

(a) issued in respect of a consumer purchase, and

(b) on which the purchaser or any one signing to accommodate him is liable as a party.

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Paragraph (*a*) is a phrase and paragraph (*b*) is a clause. They should not be joined by *and*. The *and* should be omitted, but in that case there is no reason for paragraphing.

A consumer bill is a bill of exchange issued in respect of a consumer purchase on which the purchaser or any one signing to accommodate him is liable as a party.

Alternatively they could both be made clauses:

- (*a*) that is issued in respect of a consumer purchase, and
- (*b*) on which the purchaser, etc.

The use of the co-ordinating conjunctions *and* or *or* in compound predicates may give rise to problems because there is an inherent ambiguity in both. The conjunction *and* may be used in a joint or several sense, or in a joint but not several sense. Thus, *A and B* might mean one or both, or it might mean both but not one. The preposition *or* may be inclusive or exclusive. Thus, *A or B* might mean *A* with or without *B*, or it might mean *A* without *B* or *B* without *A*.⁵

Questions often arise with these conjunctions in compound predicates with *may* and *shall*

He shall (a), (b) and (c)

This requires that all be done. If one is omitted the obligation is not discharged.

He may (a), (b) and (c)

This grants power or permission to do all. The normal meaning here is that the conjunction is joint and several. The holder of the power or permission may do all or any. If, for example, power were conferred to make regulations respecting (*a*), (*b*) and (*c*), no one would suggest that the regulation-making authority could make regulations only on all subjects or none.

He shall (a), (b) or (c)

Here, to do any one exhausts the obligation. The conjunction is therefore exclusive.

He may (a), (b) or (c)

If the alternatives are mutually exclusive then the conjunction is exclusive. Only one can be done. Thus, in

He may transmit the money to the person entitled thereto, deposit it to his account or pay it into court

if one alternative is selected the others are no longer available.

But if the alternatives are not mutually exclusive, then the normal meaning is that any one may be selected and the others are not exhausted; they are

5. For an excellent and illuminating discussion of the *and—or* problems, see Dickerson: *The Fundamentals of Legal Drafting*. Little, Brown and Company, Boston (1965) pp. 76-85.

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available for future use. In this connection there must be borne in mind the provision of the *Interpretation Act* that if a power is conferred it may be exercised from time to time as occasion requires.

He shall not (a), (b) and (c)

Here the prohibition is against all three in the aggregate. So long as one is not done there is no infraction.

He shall not (a), (b) or (c)

Here the conjunction would normally be inclusive. All are prohibited.

In general, therefore, the position is as follows: if the provision is empowering or permissive then *and* and *or* mean the same thing — all or any may be done — except where alternatives are mutually exclusive; if the provision is mandatory, then *and* requires all to be done to discharge the obligation, and if *or* is used then any one discharges the obligation; if the provision is prohibitory, then *and* requires all to be done to violate the prohibition, and *or* prohibits them all individually and severally.

The *A or B and C* construction leads to an ambiguity.

An inspector may seize any explosive that appears to him to be abandoned *or* to have deteriorated *and* to be a danger to persons or property.

There is doubt whether an abandoned explosive that is not a danger may be seized.

If the alternatives are to be

to be abandoned

or

to have deteriorated and to be a danger

the intent could be clarified thus:

appears to him to be abandoned *or appears to him* to have deteriorated and to be a danger.

If the alternatives are

to be abandoned and a danger

or

to have deteriorated and be a danger

the intent could be expressed as follows:

that appears to him

(a) to be abandoned, or

(b) to have deteriorated,

and to be a danger.

PRESCRIBED

The use of the adjective *prescribed* can often be used to good advantage.

There are situations where it is necessary to refer to many things that are to be specifically defined or ear-marked by regulations. This can be done by saying in each place *prescribed by regulation* and then conferring power to prescribe the regulation. But this involves repetition and detail.

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We can, instead, refer to *prescribed* things, define *prescribed* as meaning *prescribed by regulation*. It would be necessary, however, to add power to make regulations. This could be done by a specific provision:

prescribing any matter or thing that by this Act may be prescribed

prescribing any matter that under this Act (by this Act) is to be prescribed.

Or, by an omnibus provision:

... may make regulations for carrying out the purposes and provisions of this Act.

WORDS OF EXCLUSION

Various expressions can be used to subtract a specific item or class from a larger or more general one. Some of the more common ones are *except*, *other than*, *not being*, *not including*. At times there may be a multiple exclusion, the effect of which is to exclude an exclusion, as in

A except B other than C

But the piling up of exceptions can lead to confusion, as in

A except B other than C but not including D unless E.

Sometimes the exclusion relates only to something within the definition; at other times the exclusion is from the word defined.

In the definition

“creditor” includes an unsecured creditor except a bank

an unsecured bank creditor is excluded from the inclusive definition only, so that a secured bank creditor would be included in the ordinary meaning of the word *creditor*. In

“creditor” includes an unsecured creditor but does not include a bank

a bank, whether secured or unsecured, is excluded from the definition.

Apples cannot be subtracted from oranges. A provision like

This section applies to threshing engines except railway locomotives

is impossible. If all threshing engines can move on their own power, the provision could be

This section applies to locomotive engines except railway locomotives.

This section applies to locomotive engines but does not apply to railway locomotives

UNNECESSARY WORDS OF EMPHASIS

There is often a temptation to put in words that merely emphasize what has been said, but have no real function.

An inspector may open any package *of whatsoever nature*.

An inspector may require the owner to give him samples of any substance, *whether in the state of raw material, material in the course of manufacture, or manufactured material*.

Every person who *enters without permission or lawful authority or otherwise* trespasses.

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Occasionally a *whether or not* provision may be desirable to remove doubt, but as a general rule unnecessary words of emphasis should be eschewed.

INTERNAL CONSISTENCY

A draftsman should strive for internal consistency. In its simplest form it means that the same word should be used to say the same thing. For example, a *vehicle* should not be called a *motor vehicle* in one place and an *automobile* in another place in the same statute if the same thing is intended. Conversely there is a presumption or at least an implication that if a different term is used something else is intended.

The principle, however, goes much deeper, and it should be applied also to different grammatical forms of the same word.

Thus in an Ordinance authorizing a hotel-keeper to seize and sell property of a guest in payment of his bill there is a provision that any surplus of the proceeds of sale remaining after payment of the debt is to be paid to the person who *applies* for it, and then there is the further provision that if no *application* is made within a certain period of time the surplus must be paid to the Territorial Treasurer.

This describes two situations, one of which is the complete opposite of the other. If the reference is to the making of an *application*, then the opposite situation should be described as *no application made*. It would not be sufficiently accurate to use some other expression such as *no claim* or *unclaimed*.

Some of the possibilities are as follows:

claim <i>is made</i>	no claim <i>is made</i>
	claim <i>is not made</i>
money <i>is claimed</i>	money <i>is not claimed (unclaimed)</i>
application <i>made</i>	application <i>not made</i>
	<i>no application made</i>
money <i>applied for</i>	<i>not applied for</i>

If any of the expressions in the left-hand column are used to describe the circumstances in which the money may be paid out to the owner then the circumstances in which the money must be paid to the Territorial Treasurer should be described in the language in the right-hand column immediately opposite. The lines should not be crossed.

In the same Ordinance new expressions such as *lien*, *surplus*, *amount owed* should not be introduced when these things have not been spoken of earlier. In some statutes, of course, there may be no difficulty, but there can easily be situations where doubt or confusion is caused when a new term is introduced, not occurring elsewhere.

LINK WORDS

It is generally desirable to make each sentence complete and self-contained. A sentence should not, as a general rule, mention persons, things or events mentioned outside the section unless there is some kind of a link

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between the two. This may be done in various ways, as for example, by a direct cross-reference, a definition, or a general reference to the Act as a whole. Sometimes, in a short statute, a definite article or a pronoun may suffice, as too many cross-references or cross-descriptions may make the statute awkward or stilted. Link words are also needed *within* a sentence to link a person, thing or event to one mentioned or to be mentioned in the sentence. This can often be done with a single word such as *so, thereupon, therewith, therefrom, thereafter*.

The demonstrative *that* can often be used, and frequently a pronoun, *he, it, they*, or the definitive article *the* is sufficient. These single words can often be used to avoid repetition. Thus, if there has been a reference to

...minutes of the proceedings at the first meeting of the creditors...

then later in the sentence a reference to *the* minutes or to *those* proceedings is adequate and avoids repetition of the description.⁶

But sometimes more elaborate descriptive words must be inserted.

Where a motor vehicle accident has occurred, the driver shall notify a constable.

There should be inserted something to link the driver to the accident — the driver of *every vehicle involved in the accident*

REFERENCES TO PARAGRAPHS

Cross references to paragraphs are sometimes incomplete. The paragraph may be only a fragment of what is intended to be referred to.

4. (1) Every person who kindles a fire as described in section 2 or section 3 shall cause the fire to be guarded

(a) by three men in the case of a fire described in section 2, or

(b) by four men in the case of a fire described in section 3.

(2) Every person who fails to comply with paragraph (a) of subsection (1) is guilty of an offence...etc.

Here, subsection (2) is defective. Paragraph (a) does not contain the requirement — only a fragment of it. The reference should be to the total requirement, somewhat as follows:

(2) Every person who fails to comply with *subsection (1) with respect to a fire described in section 2* etc.

SHIFT IN VOICE

A section of an Ordinance respecting fire prevention switches from active to passive.

No person shall keep on any premises a larger quantity of gunpowder or other explosive than twenty-five pounds unless the same is stored at least one hundred feet from any building, nor shall any greater quantity than one hundred pounds be kept within any fire limits nor within one mile from the centre thereof.

6. See the examples, *supra* pp. 78-79, where two sentences have been combined and there are link words in the second.

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Good writing in general forbids such a shift in point of view. In legislation a shift from active to passive in this kind of a provision is objectionable also on the ground that there is no identifiable subject in the second co-ordinate clause.

MULTIPLE SUBJECTS AND PREDICATES

It is not uncommon to see two or more nouns attached to two or more verbs. Often they are not suitably matched and often grammatical misconstructions result. For example, in a former statute providing for the amalgamation of railway companies the following expressions are found.

Shall and may have and exercise powers, rights, privileges and immunities.

Shall and may perform and be subject to duties, responsibilities and restrictions.

In the first example we have first two auxiliary verbs, *shall* and *may*, followed by two principal verbs, *have* and *exercise*. *Shall* and *may* do not fit *have*, and *shall* is too strong for *exercise*. The *shall* should be omitted and the *may* linked to *exercise* — *have and may exercise* — but if they *have* it they may *exercise*, so *have* is enough. Secondly, the verbs are followed by four objects — *powers, rights, privileges and immunities*. The verb *exercise* does not fit *privileges* or *immunities*.

In the second example we also have *shall* and *may* followed by two verbs, *perform* and *be subject*, but one is active and one is passive. An auxiliary should not be made to perform this double function. Again, the verbs do not fit the objects. One does not *perform restrictions*.

CHAPTER IX

THE PROVISO

The legislative proviso deserves a chapter of its own. The traditional use of the proviso may be illustrated by the following example:

The bank may issue and re-issue notes payable to bearer on demand and intended for circulation: *Provided* that the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes.

What is the grammatical function of the word *provided* — what part of speech is it? Obviously, the word is derived from the verb *to provide*, and is its passive participle. Now, a participle may be used with an auxiliary to provide a verb tense, and participles may be used as adjectives. In the foregoing example, *provided* is clearly not an adjective; there is no noun that it could modify. It must, therefore, be part of a verb form, but where is the auxiliary? The only possible auxiliary is the verb *to be*, so that the complete verb is *is provided* or *is being provided*. The verb form being passive, the grammatical subject must be *it*; and the true subject is Parliament. The word *provided*, therefore is an enacting word, and it means *it is provided*.

In the earliest statutes the enacting formula was the complete clause *it is provided*. Prior to 4 Henry VII the statutes were recorded first in Latin and then in Norman French. The first two words of the “Provisions” of Merton are *Provisum est*, and this formula was also used throughout the Statute of Marlborough. In the reign of Edward I, Norman French began to be used and we find the expression *purveu est*. By the time we reach the statutes of Edward III other enacting verbs appear. Thus, in the Statute of Westminster, we have *est acorde ordine & establi* and also *acorde est & establi*. But whatever word was used, it always appeared as a participle coupled to the auxiliary verb *est*.

The participle without the auxiliary appeared in 1353 in the statutes of 27 Edward III; the translation reads as follows:

Provided always, that at what time they come before they be outlawed, and will yield them to the King’s prison to be justified by the law, and to receive that which the court shall award in this behalf, that they shall be thereto received; the forfeiture of the lands, goods, and chattels abiding in their force, if they do not yield them within the said two months, as afore is said.

Two more appeared in 1389 in the statutes of 13 Richard II — *provided nevertheless* and *provided always*. The participle without the auxiliary was a rarity until the reign of Henry IV, and it occurred frequently in the statutes of Henry VIII and Elizabeth I. In those days the participle invariably carried an

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adverb with it; usually *always*, but sometimes *nevertheless* or *also*. In more recent times the adverb was as often absent as present.

In all these cases, the word *provided* was clearly a term of enactment, and its character as such did not change by the dropping of the subject *it* and the auxiliary *is*. Originally, each enactment in a statute had to have its own enacting clause. The statutes were written in one piece, without distinction by paragraphs or sections and without punctuation; each separate enactment was distinguishable only by a separate enacting clause. The printers, however, divided the statute into numbered provisions. The first section was always the preamble, which included one substantive provision. A *Be it enacted* in the minds of the printers rated a section number. If there was a *provided that*, a new section number was usually inserted, but not always. Evidently it was left to the printers to decide whether *provided that* should remain in the body of the section or should begin a new section. In any case, it is clear that *provided* could have no grammatical purpose except as an enacting word — *it is provided*. Sometimes it introduced an exception or a qualification, but at other times it merely added another provision.

The significant feature of legislation up to the middle of the nineteenth century was that each enactment was expressed as a noun clause in the accusative case, rather than as an independent sentence. The first enactment was the object of the enacting verb, joined by the conjunction *that*; thus, *Be it enacted, by and with the Advice and consent etc.,...that*, etc. In later enactments of the statute, the word *aforesaid* replaced the reference to the enacting authority, but the grammatical structure remained the same: *Be it enacted by the Authority aforesaid that*, etc. But the *provided that* formula continued to be used as an alternative formula to introduce further enactments. Two possible explanations for this come to mind. The first is that many of the enactments were subordinate in nature, qualifying a preceding enactment, and, therefore, did not merit the more dignified *Be it enacted by the Authority aforesaid*. The second is that the draftsman found the constant repetition of the standard enacting formula tiresome and indulged in a change of pace. But the accusative form had to be retained for the sake of consistency; there had to be a verb (*provided*) equal to the enacting verb, and a conjunction (*that*).

This practice continued until the reign of Queen Victoria but a change was made in 1850. Section 2 of chapter 21 of 13 & 14 Victoria enacted that

All Acts shall be divided into sections if there be more enactments than one, which sections shall be deemed to be substantive enactments without any introductory words.

This statute was declared to come into force at the beginning of the following session and we see a change in the form of the statutes of 13 & 14 Victoria. The preamble no longer contains a substantive provision and it is not numbered; the individual sections are not preceded by separate enacting clauses.

The preamble to chapter one of 14 & 15 Victoria reads

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Whereas it is expedient to amend the Passengers Act, 1849, as hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same; that

The placing of the conjunction *that* at the beginning, and the consecutive numbering of each enactment thereafter, make it clear that each enactment is the object of the enacting verb, and a further verb and conjunction are not needed. In later statutes *as follows* replaced *that*: the enactments thus retain their character as objects of the enacting verb, but without a conjunction; the phrase *as follows* is an abbreviation of the adverbial clause *as it follows*.

The enacting formula for Canadian statutes is set out in section 4 of the *Interpretation Act* as follows:

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

The words *enacts as follows* govern the whole statute and to insert a further enacting clause is legally and grammatically unnecessary and incorrect.

Coming back to our example, and completing the ellipse, we get

The bank may issue and re-issue notes payable to bearer on demand and intended for circulation: *it is provided* that the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes.

But the first sentence is also *provided* by Parliament; and so is everything else in the statute. Why use an enacting formula for only one sentence and not for the others? If *provided* is correct, it would be equally correct to use a synonym like *stipulated*, *enacted*, or *ordained*.

The bank may issue and re-issue notes payable to bearer on demand and intended for circulation: *Stipulated that* the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes.

The dictionaries tell us that *provided* is a quasi-conjunction, meaning *with the provision or condition (that)* or *it being provided or stipulated (that)*. Even in this conjunction sense, it has not lost its character as a participle. But, when used as a conjunction, it must be a subordinating conjunction, introducing a dependent clause.

We shall go to the country tomorrow, *provided* it does not rain.

We see that, as a conjunction, *provided* means *if*. As Fowler says

Provided is a small district in the kingdom of *if*; it can never be wrong to write *if* instead of *provided*: to write *provided* instead of *if* will generally be wrong, but now and then an improvement in precision.

By substituting *if* for *provided that* in our example, we get this result:

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The bank may issue and re-issue notes payable to bearer on demand and intended for circulation: *If* the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes.

Obviously, *provided* is not being used as a subordinating conjunction. In the example given we could very nicely substitute *except* for *provided*. The word *except* is a preposition, and by substituting it for *provided* we get a correct sentence — *except* is a preposition, and takes as its object the clause following, joined by the conjunction *that*. The two words together — *except that* — could be regarded as a conjunction.

Notwithstanding its frequency or antiquity, the proviso is hardly more than a legal incantation. The best that can be said for it is that it is an all-purpose conjunction, invented by lawyers but not known to or understood by grammarians. Sometimes it is subordinating, joining a dependent clause. Sometimes it is co-ordinating, joining two independent clauses; if the clauses are completely separate rules, it is supposed to mean *and*; if they are alternative, it is supposed to mean *or*; if one is a qualification of the other it is supposed to mean *but*; and if one is an exception to the other it is supposed to mean *except that*; and sometimes *provided that* is used as a conjunctive adverb, the equivalent of *nevertheless*, *moreover*, or *furthermore*. But what it is supposed to be in any particular case is largely a matter of speculation. For all the foregoing situations a perfectly good conjunction is available. In some cases a semicolon, colon or period would be much better than a conjunction. And in many instances, instead of adding a clause, it would be better to insert a phrase or other modifier somewhere in the body of the main sentence. All too frequently, provisos are used to tack on additional words that are not grammatically capable of being joined.

We may now consider a number of actual examples.

The pension to a militiaman on retirement shall be, if he has completed twenty-five years' service, an annual sum equal to thirty-fiftieths of his annual pay and allowances with an addition of one-fiftieth of his annual pay and allowances for every completed year of service above twenty-five years: *Provided that* the pension shall not exceed two-thirds of his annual pay and allowances at his retirement.

Here *provided that* means either *nevertheless* or *except that*; but the proviso is not a special case or an exception — it is a contradiction of part of the main rule, a common error. It should be set up as follows:

The pension....shall be....the lesser of

- (a) an annual sum equal to thirty-fiftieths of his annual pay and allowances, with an addition of one-fiftieth of his annual pay and allowances for every completed year of service above twenty-five years,
or
- (b) an annual sum equal to two-thirds of his annual pay and allowances at his retirement.

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It is proper to say that something shall be *fifty or twenty-five, whichever is the lesser*, but senseless to say that it shall be *fifty but not more than twenty-five*.

Such exclusive right shall be valid for the term of five years, but may be renewed, at or before the expiration of the said term of five years, for a further period of five years or less on payment of the fee in this Act prescribed for extension of time: *Provided that* the whole duration of the exclusive right shall not exceed ten years in all.

Here *provided that* is used as a co-ordinating conjunction in the sense of *but*; the proviso is simply a qualification of the principal rule.

In case either post No. 1 or post No. 2 of a mineral claim be on the boundary line of a previously located claim, which boundary line is not at right angles to said location line, the Dominion land surveyor when making the survey may include the fraction so created within the claim which is being surveyed: *Provided that* such fraction is available and open to disposal and *that* the claim including the fraction does not exceed in area fifty-one and sixty-five-hundredths acres.

In the above example *provided that* is supposed to be a subordinating conjunction; *if* should be substituted for *provided that* and the second *that* omitted.

Every justice holding a preliminary inquiry shall cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written; *Provided that* the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who before acting shall, unless he is a duly sworn official court stenographer, make oath that he shall truly and faithfully report the evidence.

The proviso is an exception to the main rule, and *except that* could be substituted. It would be better to write two subsections, beginning the first with *Subject to subsection (2)* or *Except as provided in subsection (2)*.

A judge of any superior or county court may appoint a commissioner or commissioners to take the evidence upon oath of any person who resides out of Canada and is stated to be able to give material information relating to an offence for which a prosecution is pending under this Part, or relating to any person accused of such offence, in the circumstances and in the manner, *mutatis mutandis*, in which he might do so under section nine hundred and ninety-seven; and all the provisions of the said section, in respect of matters arising thereunder, shall apply *mutatis mutandis* to matters arising under this section: *Provided that* no such appointment shall be made without the consent of the Attorney General.

The proviso is used as a co-ordinating conjunction to join two widely separated clauses — *A judge may appoint...but no such appointment shall be made*. *But* could be substituted, but it would be better to open the sentence *A judge of any superior or county court may, with the consent of the Attorney General, appoint*. The proviso looks like an inspiration after the type was set.

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Whenever any person is charged before any justice or justices, with any offence mentioned in section seven hundred and seventy-three, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as in this Part provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for trial before the nearest magistrate in like manner in all respects as a justice or justices are authorized to commit an accused person for trial at any court: *Provided that* no justice or justices, in any province, shall so remand any person for trial before any magistrate in any other province.

Here again *provided that* is a co-ordinating conjunction equivalent to *but*; the clauses joined are *the justice...may...remand...but no justice...shall remand*.

Any number of counts for any offences whatever may be joined in the same indictment, and shall be distinguished in the manner shown in form 63, or to the like effect: *Provided that* to a count charging murder no count charging any offence other than murder shall be joined.

The proviso is an exception; *provided that* should be *except that*.

If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately; *Provided that*, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of distinct charges of theft, not exceeding three, alleged to have been committed within six months from the first to the last of such offence, whether against the same person or not.

Here *but* would do.

If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall, without further inquiry or examination, either commit him to prison by a warrant which may be in form 67, or to the like effect, or admit him to bail as provided in other cases: *Provided that* if it appears that the accused has without reasonable excuse broken his recognizance to appear he shall not in any case be bailable as of right.

The proviso here is a fragment of the case and could be written *unless it appears that the accused has without reasonable excuse broken his recognizance*. The proviso could also be written as a separate enactment, either in another subsection, or in the same section with *but for provided that*.

Such declaration or order in council may state a day upon which it is to come into effect, and shall in that case only have effect upon and after the day so named: *Provided that* no such declaration or order in council shall be deemed to affect the liability for duty of, or the rate of duty applicable to, any goods imported previous to the time when it comes into effect.

The proviso should be stated as a separate rule; it has no relation to the first rule. The first rule states that where a day is named, the order or declaration has effect only upon or after that day; it is therefore unnecessary to say that it does not have effect prior to that day. The proviso is intended to cover the

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case where no day is named. Written as one section, the conjunction should be *and*.

The collector may, if he sees no reason to refuse such permission, permit an importer to abandon to the Crown any whole package or packages of warehoused goods, without being liable to pay any duty on the same; and the same shall then be sold and the proceeds shall belong to the Crown: *Provided that*, if such goods cannot be sold for a sum sufficient to pay the duties and charges, they shall not be sold but shall be destroyed.

Here *but* or *except that* would be better. But the sentence could be improved. It provides that the goods *shall be sold* and then admits that they cannot be sold. It would be better to provide that the goods shall be sold if they can be sold for a sum sufficient to pay the duties and charges and that they shall be destroyed if they cannot be sold.

Any party may, at the trial or other proceeding, use in evidence any part of the examination of the opposite party: *Provided that*, in such case, the court may look at the whole of the examination, and if it is of the opinion that any other part is so connected with the part to be so used that the last mentioned part ought not to be used without such other part, it may direct such other part to be put in evidence.

Here *provided that* means *and*. The two sentences could be separated by a semicolon without *provided that*, or *and* could be substituted.

Except for the *bona fide* purpose of protecting investments previously made by it, and subject to the approval of the Treasury Board, no such life insurance company shall, nor shall its directors or officers or any of them on its behalf, under colour of an investment of the company's funds, or otherwise, directly or indirectly be employed, concerned or interested in the formation or promotion of any other company: *Provided that* nothing in this Act shall be deemed to prohibit insurance companies investing their funds in securities of a new company as provided in section fifty-four of this Act.

The proviso is a second sentence that has nothing in common with the first. It should be a separate section because it qualifies the whole Act.

Any such parcel of land, or any interest therein, not within the exceptions hereinbefore mentioned, which has been held by such company for a longer period than twelve years without being disposed of, shall be liable to be forfeited to His Majesty for the use of Canada: *Provided that*

- (a) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the company by the Minister of the intention of His Majesty to claim the forfeiture; and
- (b) the company may, notwithstanding such notice, before the forfeiture is effected, sell or dispose of the property free from liability to forfeiture.

Here we have three separate enactments —

- (1) A parcel of land is liable to be forfeited.
- (2) No forfeiture shall take place until a certain time.
- (3) The company may sell.

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The section should be re-cast into three subsections.

Notwithstanding anything in this Act contained, any person may insure his property, or any property in which he has an insurable interest, situated in Canada with any British or foreign unlicensed insurance company or underwriters, and may also insure with persons who reciprocally insure for protection only and not for profit; and any property insured or to be insured under the provisions of this section may be inspected and any loss incurred in respect thereof adjusted: *Provided that* such insurance is effected outside of Canada and without any solicitation whatsoever directly or indirectly on the part of such company, underwriters or persons by which or whom the insurance is made; *and provided further that* no such company, underwriters or persons shall within Canada advertise their business in any newspaper or other publication or by circular mailed in Canada or elsewhere, or maintain an office or agency therein for the receipt of applications or the transaction of any act, matter or thing relating in any way to their said business.

In the foregoing example there are two provisos. The first *provided that* is a subordinating conjunction (*if*) and the clause that follows is part of the case. The second *provided that* is a co-ordinating conjunction adding another sentence in qualification of the first. The section could be patched by substituting *if* for the first *provided* and *but* for *and provided further that*. The whole section should be re-cast somewhat as follows:

(1) Notwithstanding anything in this Act, any person may insure his property situated in Canada, or any property situated in Canada in which he has an insurable interest,

(a) with any British or foreign unlicensed insurance company or underwriters, or

(b) with persons who reciprocally insure for protection only and not for profit,

if the insurance is effected outside Canada and without direct or indirect solicitation by the company, underwriters or persons with whom the insurance is made.

(2) Any property insured or to be insured under this section may be inspected and any loss incurred in respect thereof may be adjusted.

(3) No company, underwriter or persons mentioned in paragraph (a) or (b) of subsection (1) shall within Canada

(a) advertise their business

(i) in any newspaper or other publication, or

(ii) by circular mailed in Canada or elsewhere, or

(b) maintain an office or agency for

(i) the receipt of applications, or

(ii) the transaction of any act, matter or thing relating in any way to their business.

Perhaps the modifiers in the above re-draft are not in the correct position; the original section contains a number of ambiguities that could be resolved only by discussion with officials of the administering department.

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Every one who, being a director, manager or officer of a company, or acting on its behalf, commits any act contrary to the provisions of this Act, or fails or neglects to comply with any such provision, shall, if no penalty for such act, failure or neglect is expressly provided by this Act, be liable, on summary conviction, to a penalty of not more than one thousand dollars, or to imprisonment for not more than one year, or to both such penalty and imprisonment: *Provided* no proceeding shall be taken under this section without the consent in writing of the Secretary of State.

The proviso above is a separate enactment and should be a separate section or subsection. If they must be combined, *but* could replace *provided*, and the word *proceeding* should be explained to be a *prosecution under this section*.

Upon the application to the Minister for a certificate confirming such by-law, the company shall satisfy him of the *bona fide* character of the decrease of the capital thereby provided for; and, unless it appears that the granting of such certificate would not be in the public interest, the Minister, with the approval of the Treasury Board, may grant the same: *Provided that* with the consent of the directors the amount of such decrease of capital may, by the said certificate, be changed, and the decrease made subject to such conditions as the Treasury Board may think proper.

The proviso is again an additional enactment. The section should be broken up into three subsections.

The judges shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons: *Provided that* each judge, whether heretofore appointed or hereafter to be appointed, shall cease to hold office upon attaining the age of seventy-five years, or immediately, if he has already attained that age.

Here the proviso is an additional qualifying clause governed by *but*; the *shall be removable* should be joined to the *shall cease to hold* by *and*. Incidentally, the *shalls* could be dropped in favour of *are removable* and *cease to hold*. Chapter XIV deals with *heretofore*, *hereafter* and *already*.

Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: *Provided that* no one shall be held to give provocation to another by doing that which he has a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

The proviso is a separate enactment and should be a separate subsection; it is, in reality, a definition of *provocation*.

“Canadian citizen” means

- (i) a person born in Canada who has not become an alien;
- (ii) a British subject who has Canadian domicile; or
- (iii) a person naturalized under the laws of Canada who has not subsequently become an alien or lost Canadian domicile:

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Provided that for the purpose of this Act a woman who has not been landed in Canada shall not be held to have acquired Canadian citizenship by virtue of her husband being a Canadian citizen; neither shall a child who has not been landed in Canada be held to have acquired Canadian citizenship through its father or mother being a Canadian citizen.

This example is doubly reprehensible; it adds substantive provisions to a definition by way of a proviso. The contents of the proviso should be taken out of the definition section and placed in the body of the Act.

In the United Kingdom and in other jurisdictions Coode's recommendation⁷ on the use of the proviso — that it be confined to taking special cases out of general enactments and providing specially for them — has been adopted and is strictly followed. For example, in the *British Crown Proceedings Act* there is the following provision:

21. (1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that:

- (a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall, not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
- (b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

There is no harm in using a proviso this way if it is strictly confined to this use, but it still serves no grammatical function and is still unnecessary, as the following re-write indicates:

21. (1) In any civil proceedings by or against the Crown the court shall, *subject to the provisions of this Act*, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require.

(2) Where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or

7. Appendix I, *infra* at p. 357

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make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties.

(3) In any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(4) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

CHAPTER X

THE DRAFTSMAN AND THE COURTS

It is not enough for a draftsman to write a plain provision. He must also guard against misconstruction. Over the years the courts have evolved a series of what are called rules of interpretation or canons of construction, although these rules or canons are more principles of language and common sense than they are principles of law. The cardinal, if indeed the only, principle of construction is that the words of a statute must be read in their total context, namely, the whole statute, the circumstances that gave rise to it and the body of the law generally. Principles of language and logic need to be applied to all writings to ascertain the intent of the author, but when applied to words without reference to the context or content of the statute the result often is misconstruction.

WORDS

Grammatical and Ordinary Sense

Initially, words must be read in their grammatical and ordinary sense. This means that words will be given their ordinary or primary meaning in relation to the subject-matter of the statute, according to rules of grammar. Hence, a draftsman must adhere strictly to established and accepted rules and principles of grammar, syntax and composition, and he must use his words in their ordinary accepted sense. If any words are to have a special or secondary meaning he must take pains to make that meaning clear.

Modification of Grammatical and Ordinary Sense

If, however, a reading of words in their grammatical and ordinary sense results in disharmony, that is to say, some inconsistency, incongruity, repugnance or illogicality within the statute, between the statute and its manifest purpose or object or between the statute and another statute, then the courts will modify the strict grammatical or ordinary sense so far as is necessary to produce harmony. But the result may not be what the draftsman intended. He must, therefore, ensure, not only that there is no inconsistency within individual sections, but that all sections together produce a uniform and consistent whole; there must be a sound legislative scheme and every provision of the statute must fit into that scheme.

Technical Words

Where a statute is aimed at a particular business or activity, then words will normally be read in the sense given to them by the people engaged in that business or activity. Words in a technical statute should therefore be used in their technical sense; but not in a non-technical statute. It is not

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enough that only some of those persons to whom the statute is addressed ascribe a technical meaning to ordinary words.

Associated Words

Words derive meaning from the words with which they are associated. Thus, in the expression *Acts and Ordinances* the implication is that *Ordinance* means an enactment equivalent to a statute⁸.

Where a general term follows an enumeration of particular terms that all fall within a discernible class, then, in the absence of an indication in the context to the contrary, the courts are likely to restrict the general words to that class. If the draftsman intends that the general word should have an unrestricted meaning, then he should see to it that the particular words cannot be put into a common category, or make it clear that the function of the enumeration is to enlarge the ordinary scope of the general word.

If the draftsman intends that the general word should have a restricted meaning, he should select a group of particular words that clearly indicate a class, and make sure that there is nothing in the rest of the statute that would be inconsistent with a restricted meaning.

Consistency

A draftsman should use the same words and expressions if he means the same thing and different words and expressions if he means different things. Lack of consistency is almost sure to create ambiguity or obscurity. The courts will initially assume consistency, and if there is lack of consistency they are likely to find a meaning not intended.

Surplusage

Unnecessary words and expressions should not be inserted. The courts will strain to give meaning to all words in a statute and if unnecessary words are used the danger is that they will modify the grammatical and ordinary sense in order to give them meaning and arrive at a result not intended.

Ambiguity

If two or more grammatical meanings are reasonably possible the courts must make a choice. They will generally select the meaning that is best in harmony with the statute as a whole. However, where the choice to be made is not clearly indicated by the context the courts will select the meaning that to them seems most reasonable, but each judge has his own standards of reasonableness and they may not coincide with those of the draftsman.

Extreme care should therefore be taken that the grammatical structure of every sentence admits of only one reasonable construction.

Implied Exclusions

There are situations where the courts will exclude one thing because another has been mentioned. If, for example, a new right is created and a special procedure for the enforcement of that right is prescribed, the courts

8. *Regina v. Markin* (1969) 68 W.W.R. 611

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may hold that all other remedies are excluded. It should be made clear whether the remedy is additional or exclusive.

PRESUMPTIONS

The courts have come to attribute certain intentions to the legislature in the absence of an indication to the contrary. The two that are most frequently encountered are the presumption against interference with vested rights and the presumption against retrospective operation.

Against interference with Vested Rights

In case of doubt or obscurity the courts are inclined to select or find a meaning that least disturbs vested rights. But if the statute is clear and unambiguous it will operate according to its terms whether or not vested rights are prejudicially affected.

There are, however, situations where the courts may introduce a doubt where none exists grammatically. In other words, they might insist on a clearer indication than the purely grammatical that vested rights were intended to be affected.

In a statute of limitations that proscribes *all actions*, even though *all actions* means *all actions* commenced thereafter, the courts usually hold that the statute applies only to causes of action that arose after the statute was enacted. The “doubt” is whether the statute applies to all actions or only to some of them. If this construction is not what a draftsman intends, he should use apt words to remove the “doubt”.

Another situation is where by a new statute *all contracts* of a class are subjected to restrictive provisions. The courts have held in some cases that *all contracts* means only contracts entered into after the enactment of the statute. Here again it would be desirable to define the scope of the word more precisely in order to avoid misconstruction.

Against Retrospective Operation

There is a presumption that a statute does not operate retrospectively so as to affect rights unless an intention to do so is clearly expressed or arises by necessary implication. A statute can be said to operate retrospectively only if it alters the law as of a time prior to its enactment. The alteration of rights for the future, even though the rights accrued before the enactment of the statute, is not a retrospective operation.

A retrospective effect is rarely expressed in a statute. It is done by stating that the statute or a provision thereof shall be deemed to have come into force before the day of its enactment, or that it operates with respect to a transaction as of a stated time prior to its enactment.

Retrospective operation is dealt with more fully in Chapter XI. Since both these presumptions have to do with vested rights they are sometimes confused. Thus, it is sometimes argued that the absence in the statute of words rebutting the retrospective presumption invokes the vested rights presumption. Merely because a statute does not alter rights as of a past time is no

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indication of an intention not to alter them for the future. It is therefore sometimes desirable to indicate expressly that the future operation of a statute extends to rights acquired before the enactment of the statute. Thus, if it is intended to alter rights under a contract it might be advisable to add the words *whether made before or after the coming into force of this Act*, thereby precluding the application of the vested rights presumption.

INTERPRETATION ACTS

Nowadays, almost every legislative jurisdiction has an *Interpretation Act*, designed not only for the interpretation of statutes, but also for their preparation. The provisions of the *Interpretation Act* should always be kept in mind by a draftsman and, unless there is some special reason for not doing so, he should prepare his statute in accordance with the provisions of the *Interpretation Act*.

The latest *Interpretation Act* of Canada is set out in Appendix II. Particular attention is drawn to the rules of construction in sections 9 to 27, the definitions in section 28 and the rules respecting repeal, amendment and re-enactment in sections 34 to 37.

CHAPTER XI

OPERATION OF STATUTES

TERRITORIAL OPERATION

In the absence of words to the contrary, a statute will operate throughout the whole jurisdiction. The *Interpretation Act* also provides that every Act of the Parliament of Canada, unless the contrary intention appears, applies to the whole of Canada.

If it is intended to confine the operation of a statute to a limited area, it is not sufficient to provide that it applies in that area; the statute should also provide that it does not apply in other areas.

Normally, statutes do not operate extra-territorially in the sense that rights or liabilities attach in respect of transactions that have taken place outside the territorial jurisdiction of the legislature. If it is intended to attach legal consequences to actions outside the territory, express provision must be made therefor in the statute.

COMMENCEMENT

The common law rule was that every statute was deemed to have commenced on the first day of the session in which it was passed. This was abolished by statute and the rule now is that, in the absence of words to the contrary, statutes come into force on the day they are enacted. As applied to the Parliament of Canada, this means the day on which they receive assent. The *Interpretation Act* so provides. The statute is deemed to have been in operation for the whole of the day on which it was assented to and not merely from the moment of assent.

Problems arise in a country like Canada with different time zones. It would seem that a statute would come into force in the eastern time zones prior to the time it comes into force in the western time zones.

A statute may be expressed to come into force on a future date. The *Interpretation Act* provides that in such cases it comes into force immediately upon the expiration of the previous day, and the *Interpretation Act* also authorizes preliminary proceedings in order to make the Act effective from the date of its commencement.

An Act may also be expressed to come into force on the happening of a named event, usually a proclamation issued under the Great Seal. The event should be one that is readily ascertainable from official and accessible records. If an Act is expressed to come into force, for example, on a day that an agreement is entered into between two persons, others would not be able to

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ascertain — except with difficulty — the date on which the statute came into operation.

ENACTMENT AND COMMENCEMENT

There is a difference between the enactment of an Act and its commencement. The former relates to the time it is assented to, and the latter to the time when it comes into operation. A statute frequently refers to the day on which it comes into force. Care should be taken in preparing amendments that include references to the dates on which the amendments come into force because, when the amendment has been effected, an intended reference to the amending Act may become a reference to the amended Act. For example, suppose it is intended to add a new section to an Act referring to things that take place after the date the new section is enacted. A reference in the new section to the coming into force of *this Act* would not be correct, because *this Act* would mean the principal Act and not the amending Act.

DURATION

The duration of a statute is *prima facie* perpetual. A statute is not effaced by lapse of time, even if it is obsolete or has ceased to have practical application.

Some statutes become spent the moment they are enacted. For example, an amending Act that adds another section to an existing Act is spent the moment it becomes law. At that time the original Act has been altered, the directions in the amending Act have been fulfilled and the latter is spent.

REPEAL

A statute may now be altered, enacted or repealed in the same session of Parliament. At common law this could not be done. The *Interpretation Act* expressly authorizes it.

Repeal is usually effected by the legislature itself, but the legislature can delegate authority to repeal. The repealing instrument should be a proclamation or other similar document that is readily accessible to all.

EXPIRY

A statute may be expressed to expire on a named day. Under the *Interpretation Act* it expires at the end of the named day. A statute may also be expressed to expire on the happening of a certain event, but the event should be readily ascertainable from official records.

REVIVAL

At common law, if one Act amended another, and the amending Act was then repealed, the previous Act was restored. This rule has been abolished by the *Interpretation Act*.

EFFECT OF REPEAL OR EXPIRATION

The general rule of interpretation is that the repeal of a statute does not affect vested rights or transactions past and closed. And the *Interpretation Act* contains special rules respecting the repeal of statutes. Detailed discussion of

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the effect of repeal is outside the scope of this work. But it is often difficult to come to any firm conclusion in a specific case on the application of the rules of interpretation or the provisions of the *Interpretation Act*. If a specific problem is foreseen, it is well to deal with it specially in the statute.

TRANSITIONAL PROVISIONS

The *Interpretation Act* contains some general transitional provisions, but special provisions are often necessary where a statute is repealed and a revised Act is substituted. Transitional provisions are usually necessary, for example, in the following cases:

1. Where the old Act provides for the creation of a corporation, board, etc., or the appointment of officials, and the new Act has the same provisions. Provision should be made for continuing the existence of the corporation or board, or for continuing the officials in office.
2. Where the old Act provides for a continuing payment on an adjudication, as in a pensions Act, the new Act should provide for payment under adjudications made under the old Act as well as the new, and that any review procedure should apply also to adjudications under the old Act.
3. Where the old Act prescribes a procedure, the new Act should provide for continuation so that proceedings will not have to be begun afresh.

There are situations where a revised law is enacted but it is intended to preserve the old law in relation to past transactions, so that two statutes continue simultaneously. This situation frequently obtains in taxing statutes. One method of accomplishing this result is to make an exception to the repeal clause and say that the old law remains in force as regards former transactions. Another method is to add a section saying that *this Act* (i.e. the Act that repeals and substitutes) applies only to new transactions; the result is that there has not been a repeal and substitution in relation to past transactions.

RETROSPECTIVE OPERATION AND VESTED RIGHTS

Some textbooks on the interpretation of statutes define a retrospective statute as one that takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed.

This definition has received some support from the bench, but the decisions appear to stress the first branch of the definition (taking away or impairing any vested right acquired under existing laws) and to ignore the second (creating a new obligation, imposing a new duty, or attaching a new disability in respect to transactions or considerations already passed).

It hardly seems right to say that a statute that takes away a vested right is retrospective. There is undoubtedly a rule of interpretation to the effect that statutes ought, *if possible*, to be interpreted so as to respect vested rights, but that rule is distinct from the other rule that no statute should be construed to have a retrospective operation. As Buckley, L.J. said in *West v. Gwynne*,⁹ *Retrospective operation is one matter. Interference with existing rights is an-*

9. (1911)L.R.2Ch. D.1.

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other. Of course, a retrospective statute — e.g., one that states it shall be deemed to have come into force prior to the date of assent — could abrogate any rights that were acquired in the meantime. A retrospective statute, therefore, can destroy vested rights, but it does not follow that a statute is retrospective merely because it does destroy vested rights.

The explanation by Duff, C.J. of the presumption respecting interference with vested rights in *Spooner Oils Ltd. v. Turner Valley Gas Conservation Board*¹⁰ indicates that the presumption does not involve retrospection. He said that

A legislative enactment is not to be read as prejudicially affecting accrued rights, or an existing status, unless the language in which it is expressed requires such a construction. The rule is described by Coke as a law of Parliament meaning, no doubt, that it is a rule based on the practice of Parliament; the underlying assumption being that, when Parliament intends prejudicially to affect such rights or such a status, it declares its intention expressly, unless, at all events, that intention is plainly manifested by unavoidable inference.

In *Acme Village v. Steele* 11, Lamont, J. recognized the independence of the two presumptions, the first *that statutes are not to be construed as having retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary or distinct implication*, and the second, *that statutes should not be given a construction that would impair existing rights, unless that effect cannot be avoided without doing violence to the language of the enactment*.

This distinction between retrospective operation and interference with rights was explained in *West v. Gwynne*. In that case the question was whether section 3 of the *Conveyancing Act, 1892*, was of general application, or whether its operation was confined to leases made after the commencement of the Act. That section enacted that *in all leases* containing a covenant against assigning or underletting without licence or consent, such covenant should, unless the lease contained an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine should be payable for or in respect of such licence or consent. It was argued that a statute is presumed not to have a retrospective operation unless the contrary appears by express language or by necessary implication. Cozens-Hardy, M.R. said he assented to that general proposition, but he said he failed to appreciate its application to the present case.

10. (1933)S.C.R.629 at 638.

11. (1933)S.C.R.47 at pp.50-51.

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Buckley, L.J. said that to his mind the word *retrospective* was inappropriate, and the question was not whether the section was retrospective. He said:

Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. This is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law.

The decision of *West v. Gwynne* was followed in *Rex. v. Levine*¹². In that case the accused was in possession of liquor on premises that were used partly as a shop and partly as a dwelling house. At the time of purchase the premises were included in the definition of *residence* in the *Liquor Control Act*, and accordingly the accused was lawfully in possession at the time of purchase. The statute was then amended so as to exclude from the definition of *residence* premises of the class described. The accused was convicted and the conviction was affirmed by the Manitoba Court of Appeal. Prendergast, J.A. said that the effect of the amendment in its application to the case under consideration was in no way retrospective. He went on to say:

Now, none of the ingredients of the offence charged are "in respect to transactions or considerations already past". The existence or presence of the liquor on the premises, only refers to its existence or presence there on the 27th. The appellant's possession of it, is merely her possession of it on that day. The condition or lay-out of the premises which made them "a place other than the private dwelling house in which she resides" (being the inclusion of a store), is also the condition of the premises on that same day. So that all the things and matters that are either formally set forth or implied in the information, happened or existed on the 27th, quite independently of anything that had happened or existed before.

There are other cases where the courts have refused to confound the *retrospective* with the *vested rights* presumption. For example, in *Bank of Athens v. Royal Exchange Assurance*¹³ the court had to construe a statute that empowered the court to award interest *on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment*. It was argued that the statute was not retrospective and accordingly applied only to proceedings begun after the Act came into force. Bronson, J. did not discuss the distinction between Acts affecting *procedure* and Acts affecting *substantive rights* and made no mention of retrospective operation. He said simply:

12. (1926)46 C.C.C.342.

13. (1933)1 K.B.771.

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I think that on the true construction of that section the court in any proceeding, whenever commenced, whether before or after the Act, has the discretion which the section gives it. The words as they stand are applicable in that sense. If it was intended to restrict the application to proceedings begun after the Act came into force, I think one would have expected to find appropriate words in the section.

What is the essential character of a retrospective statute? When does it create a new obligation or impose a new duty or attach a new disability in respect to past transactions?

Suppose that a statute enacted that every barrister should pay a tax of ten dollars. One can picture a lawyer, who had been admitted to the Bar prior to the enactment of the statute, arguing that he was exempt from the tax because the statute would be given retrospective operation if he were required to pay the tax. The fallacy in such an argument is that the statute has nothing to do with admission to the Bar. The term *barrister* is used merely to describe the class of person to whom the law applies and would embrace a person who entered the described class prior to the enactment of the statute. The only question is whether he is in the class at the time the statute is enacted. If the statute read *Every person shall upon admission to the Bar pay a tax of ten dollars* the lawyer who was admitted to the Bar prior to the enactment of the statute would have a case. The statute would then be aimed at the act of admission to the Bar, the transaction in respect of which the tax is imposed, and would undoubtedly be construed as applying only to such transactions as took place after the enactment of the statute.

Suppose, however, that the statute said that every barrister should pay an *annual* tax of ten dollars. A man who was admitted to the Bar prior to the enactment of the statute could not escape the tax; the application of the statute to him would not be retrospective. However, he would not be required to pay a tax in respect of the years that he was a member of the Bar prior to the enactment of the statute, because that would clearly be imposing a *new obligation in respect of considerations already passed*.

Taking another example, suppose that a statute provided that every widow with two children is entitled to a pension. Here again it would be immaterial whether the widow became a widow before or after the enactment of the statute. The statute merely describes the limited class of persons who are to benefit under the new law. On the other hand, suppose that the statute provided that *Where a person dies leaving a widow and two children, the Minister shall pay a pension to the widow*, the statute would then operate only after certain facts had occurred, namely the death of a person who had a wife and two children. A statute so framed would clearly apply only to widows who became such after the statute was enacted. Thus, in *The Queen v. The Inhabitants of St. Mary, Whitechapel*¹⁴ the statute provided that *no*

14. (1848)12 Q.B.120.

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woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow. Lord Denman, C.J., page 814,' said:

In this case a valid order of removal was made before the passing of the statute; and the removal took place after that time. The pauper had become a widow on the 6th June, 1846, before the passing of the Act, and was removed on the 3rd of September, 1846. The sessions confirmed the order of removal subject to two questions, of which we take the effect, and not the precise terms.

First: was the pauper irremovable by stat. 9 and 10 Vict. c. 66, s. 2, which enacted that no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish for twelve months next after his death if she so long continue a widow? *It was said that the operation of the statute was confined to persons who had become widows after the Act passed, and that the presumption against a retrospective statute being intended supported this construction: but we have before shewn that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing. The clause is general to prevent all removals of the widows described therein after the passing of the Act; the description of the widow does not at all refer to the time when she became a widow: and we are therefore of opinion that the pauper was irremovable at the time she was removed.*

What is the fundamental distinction between the examples cited above? If a section of a statute describes the subject by reference to his status, that is to say, by reference to his being something, then the section is not given retrospective effect when it is applied to persons who satisfied the description prior to the enactment of the section. On the other hand, if the subject is described by reference to some action taken by him or by reference to something that is to be done by or to him, then the statute is given retrospective effect if it is applied to persons who have taken such action or done those things or to whom those things have been done, before the statute was enacted.

Similarly, the description of the case will indicate whether past events are to be taken into consideration. Where a statute lays down a rule to apply in cases *where a person dies leaving a widow and two children* it is clear that the statute is to apply only after a certain event, a death, takes place. On the other hand, where a statute is to operate with reference to a certain state, it is immaterial when the state was attained. For example, if a statute were to provide that where a dwelling house *becomes* uninhabitable the owner shall do something, it would not apply to dwelling houses that had become uninhabitable prior to the enactment of the statute; but if the statute provided that where a dwelling house *is* uninhabitable the owner shall do certain things, it would be immaterial when the dwelling house became uninhabitable, and

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the statute would apply to all dwelling houses that were uninhabitable at the moment the statute came into force or subsequently became uninhabitable.

It is perhaps dangerous to generalize, but the position appears to be that whenever the operation of a statute depends upon the doing of something or the happening of some event, the statute will not operate in respect of something done or in respect of some event that took place before the statute was passed; but if the operation of the statute depends merely upon the existence of a certain state of affairs, the *being* rather than the *becoming*, the statute will operate with respect to a status that arose before the passing of the statute, if it exists at the time the statute is passed. Having decided that a statute is not by reason of the retrospective rule precluded from operating in particular circumstances, there is the further, and unrelated, question whether the statute is precluded from so operating for the reason that it impairs existing rights.

Descriptions of persons, things, or circumstances may, of course, occur otherwise than as cases or subjects. Any noun may be qualified wherever it appears in an enactment. For example, in *Where a person who is declared a bankrupt applies for a licence, the Minister may require him to furnish a bond*, the applicant for a licence is described by a relative clause, but the applicant is not the subject; a provision in this form would apply only in respect of declarations of bankruptcy and applications made after the coming into force of the provision. Without altering its meaning, the provision could also be written *The Minister may require any person who is declared a bankrupt and applies for a licence to furnish a bond*: in this form the case is eliminated and the object of the subject is described by two relative clauses. If the statute read *Where a bankrupt applies for a licence* the date of bankruptcy would be immaterial, and in the form *where a bankrupt is in possession of a licence* the date of bankruptcy and the date of the issue of the licence would be immaterial.

It is sometimes thought that the use of the perfect tense indicates an intention that the statute should be retrospective. For example, a section that recited the case *Where a police officer apprehends a person* would clearly apply only in respect of future apprehensions, but it might be thought that it would apply in respect of past apprehensions if it read *Where a police officer has apprehended a person*. It is submitted that this is not so, and that something more is required to indicate a retrospective intention. The case frequently contains a verb, and this must be followed by another verb, namely, the principal predicate. When the principal predicate is subsequent in time, the verb in the case should be expressed in the perfect tense, in order to distinguish the time elements involved in the two verbs, and it is submitted that this difference in tense does not make the statute applicable to situations that arose before the act was passed.

Confusion sometimes results from the use of *shall* in a legislative sentence. This word serves as the future auxiliary and also as an imperative, and

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the two uses are confused. In a provision like *where a police officer has apprehended a person the police officer shall* it is sometimes argued that *has apprehended* expresses a retrospective intent, and the usual argument in reply is that the word *shall* expresses a contrary intent. Such arguments are a waste of time. The word *shall* in a statute almost invariably is pure imperative, and where it is not it is usually meaningless.

It is not always possible to find the complete enactment in the sentence itself; sometimes it is necessary to go elsewhere to find the persons who are affected by it, or to find some modifier. These situations present difficulties in construction because the courts must complete the whole enactment in order to construe it. For example, a statute might provide that *An agreement to pay a wagering debt is void*. The grammatical subject of the sentence is, of course, *agreement* but who are the persons upon whom rights are conferred or duties imposed? These persons may or may not be identified elsewhere in the statute. And what is the legal effect of the enactment on these persons; is it that they shall not bring an action?

In order to construe such an enactment, the courts must visualize a more complete legislative statement. There are many possibilities, as the following examples indicate:

1. No action lies on an agreement to pay a wagering debt.
2. An agreement that contains a covenant to pay a wagering debt is unenforceable.
3. Where two or more persons have entered into an agreement to pay a wagering debt, no such person is entitled to recover any amount expressed to be payable thereunder.

In the first two examples the agreement is described only by its characteristic, and the statute would, or ought to be, held to operate on all agreements possessing that characteristic, no matter when attained. In the third example the operation of the statute depends on the act of entering into an agreement and, *prima facie* would operate only on agreements made after its enactment.

In drafting legislation there should always be kept in mind that provisions intended to have a retrospective effect or to alter existing rights may be construed as not expressing that intention; and that provisions intended to be retrospective or to affect existing rights fail to do so. If, for example, a provision is intended to operate in the past, the perfect tense in the case is not enough; there should be an express reference to prior events. And in an enactment intended to apply to a class of persons, irrespective of the time they entered that class, care should be taken not to describe that class in such

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a way that future action is necessary to come within the class. References to *after the commencement of this Act* or to *before or after the commencement of this Act* should be freely used if there is any serious danger of misconstruction.

CHAPTER XII

SUBORDINATE LEGISLATION

There are two aspects to delegation, so far as a draftsman is concerned. When drafting legislation conferring legislative power the draftsman must ensure that power is conferred to make the desired regulations; and when drafting a regulation, he must be satisfied that the regulation sought to be made comes within the powers conferred.

The distinction between a *rule* and a *regulation* is not clear; the two expressions seem to be interchangeable. The tendency in Canada is to use *regulations* with regard to all subordinate legislation, except in the case of procedural requirements before courts and tribunals, which are usually called *rules*, and rules made by corporations, which are usually called *by-laws*. No distinction will be made here, and all forms will be designated as regulations.

Regulation-making authorities may vary. In Canada the authority is usually the Governor in Council, particularly if sanctions are involved; the result is that the government as a whole assumes responsibility for the regulation. For the sake of simplicity, however, the term *Minister* will be employed in the examples given.

CLASSES OF REGULATIONS — PENAL AND NON-PENAL

Regulations fall into two broad classes: those for the violation of which a penalty is imposed, and those for the violation of which there is no sanction.

Regulations prescribing fees or forms or prescribing the steps to be followed in carrying out the statute, are examples of regulations that do not, as a rule, require sanctions to insure their enforcement. Regulations coming within this group generally depend upon the civil service or the Ministry for their enforcement, and no penal provisions are needed. These regulations are comparable to internal management by-laws of corporations, and do not directly affect the public.

On the other hand, regulations requiring members of the public to do things or to refrain from doing things, or regulations adversely affecting rights and property of private individuals are of little value unless there are sanctions to ensure their enforcement.

A draftsman should therefore first consider the nature of the regulations intended to be made. If they are purely of an administrative character, no sanctions need be imposed, and there is little danger that the regulations will be regarded as *bureaucratic* or an invasion of private or fundamental rights.

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If the regulations require sanctions to make them effective, a penalty section must be added, or authority must be conferred to impose penalties.

Frequently an Act provides a penalty for *violation of a regulation*. Thus:

Every person who violates this Act or a regulation is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Or it may be left to the regulations.

The Minister may prescribe the penalties to be imposed on summary conviction for violation of a regulation.

Should the penalty be in the Act or in the regulations? This question cannot be answered in the abstract — it depends on the circumstances. If it is in the Act, then Parliament has prescribed it, and it is not open to the executive to impose penalties. A power cannot be abused if it is not conferred. But the authority to make regulations may include authority to make purely administrative regulations, and it would be unfair to apply the penalty to breach of those regulations. For example, directory regulations might require that an application for a pension *shall be made* within six months after the applicant attains the age of seventy. A general penalty in the Act would make it an offence for a person not to apply! Or a regulation might require that the application *shall be* mailed, *postage prepaid*, to a *Director* at Ottawa, and it would then be a criminal offence to put insufficient postage or the wrong address on the envelope.

In some cases the two classes of regulations can be clearly separated in the statute, and the penalty section could be made to apply to one class only.

There is a further difficulty in setting out the penalty in the Act. One penalty must be selected for all cases. Yet some of the offences may be trifling and others serious. The tendency, therefore, will be to select a penalty too high for many of the offences. To overcome this difficulty it is sometimes possible to describe the serious offences specifically and set a heavy penalty for them, and then prescribe generally a smaller penalty for all other offences.

On the other hand, if the statute authorizes the regulations to create the offences, there is danger the power will be abused, or that the measure will be attacked on the ground that the Minister is being given too much power. In some cases it may be desirable to fix limits.

The Minister may make regulations prescribing penalties to be imposed on summary conviction for violation of a regulation, but the penalty so prescribed shall not exceed a fine of five hundred dollars or imprisonment for a term of six months or both.

Forfeitures raise the same problems as punishments by way of fine and imprisonment. Power authorizing the executive to decree forfeitures, or to make regulations for judicial forfeiture, is often criticized. If there is to be judicial forfeiture, it may be best to prescribe the forfeiture by the statute and

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at the same time lay down the judicial steps to be followed. An automatic forfeiture in the statute of all goods by means of or in relation to which any offence under the regulations may have been committed may in the ordinary case be regarded as too drastic or severe.

REGULATIONS AS PART OF ACT

Occasionally one sees it enacted that regulations made under an Act *shall be deemed to form part of the Act*. The purpose or effect of such a declaration is far from clear. It would, perhaps, serve to invoke a section that provided a penalty for violation of a regulation, but if that is the intention it would be better to provide specifically for violation of regulations. Again, the fiction might conceivably make applicable to regulations certain statutory rules regarding the construction or effect of statutes or the repeal thereof. But whatever the intent, it should be possible to state it in a more precise way.

GENERAL AUTHORITY

Most Acts conferring power to make regulations contain a general power to make regulations *for giving effect to this Act* or for *carrying the purposes and provisions of this Act into effect*. These general words sometimes stand alone and sometimes follow, or precede, an enumeration of specific powers.

Such power can, without any harm being done and without causing dispute, be given a fairly liberal interpretation if only administrative regulations are made. But a general power should be narrowly construed (either when drafting the statute or the regulation) if penal regulations are intended. If members of the public are to be punished, or deprived of their rights, by regulations, is it not better to confer the power specifically?

Authority is sometimes conferred to make regulations *for removing doubts* or for *supplying any deficiency* in the statute. Unless he is instructed to put them in, a draftsman should resist provisions of this character, because the authority intended to be conferred is extensive and the limits are obscure. If doubts arise on the interpretation of the statute, let the courts or Parliament resolve them; and if there is any deficiency or omission in the statute, let Parliament supply it.

AMENDING STATUTES

Occasionally power is conferred to amend statutes. There are but few instances of this power in the statutes of Canada. The *Food and Drugs Act* permits the amendment by regulation of a Schedule to the Act listing prohibited drugs. The justification is that it may be necessary to take action with respect to a newly discovered drug, for example, before Parliament would have an opportunity to amend. The *Currency and Exchange Act* authorizes amendment of the Schedules specifying denominations of subsidiary coin and prescribing composition and fineness. The instrument effecting the amendment should be a formal public document — as, for example, a

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proclamation under the Great Seal, published in the official Gazette — so that the amendment can be readily found and proven.

It is perhaps needless to caution that, except in unusual cases, the alteration of Acts of Parliament should be left to Parliament.

ADAPTING STATUTES

Authority is sometimes conferred to alter the provisions of a statute to meet special circumstances. For example, the *National Defence Act* provides that the disciplinary code therein *in its application to female persons*, may be limited or modified by regulations made by the Governor in Council. A former *Unemployment Insurance Act* provided that where the application of the Act to certain classes of persons would result in anomalies in relation to other classes, the Governor in Council might make regulations *making modifications in the provisions of this Act relating to the determination of claims for benefit* as might appear necessary to remove the anomalies.

There are instances where a statute must apply to certain persons or situations, and it is known that in some respects the Act as written will not fit, but it is impossible to anticipate precisely what changes must be made to make it fit.

SUB-DELEGATION

Can delegated legislative authority be further delegated? This is a question a draftsman should keep in mind both in drafting the delegating legislation and in drafting the regulations.

If sub-delegation is intended, all disputes concerning the validity of the sub-delegated legislation can be settled by conferring the power to sub-delegate. Accordingly, some statutes provide that the powers of the Minister may be exercised by some person authorized by the Minister.

Another method, already referred to, is to confer power to make regulations *respecting* or *in relation to* a subject-matter, or to make regulations for a certain purpose; a regulation authorizing some person other than the named authority to make regulations would come within the powers conferred.

CHAPTER XIII

LEGISLATION BY REFERENCE

Legislation by reference, that is to say, the incorporation of the provisions of one Act in another Act, has been subjected to much criticism. Some of it is, no doubt, deserved, but referential legislation is useful and necessary. The *Interpretation Act*, for example, is incorporated in every other Act, and if this were not so, it would be necessary to repeat most of its provisions in every statute. Indeed, before the *Interpretation Act* appeared, it was customary to repeat the same savings clause over and over again in repealing Acts. The principal purposes of an *Interpretation Act* — purposes universally approved — are to avoid repetition, secure uniformity and save some of the time and expense involved in preparing, printing and passing bills and publishing statutes.

There are various methods of binding two or more Acts together.

ENLARGING THE SCOPE OF THE ACT REFERRED TO

A simple and common method is to enlarge the scope of an Act — to make it apply where it otherwise would not apply. For example, a statute might establish a government-controlled agency and a provision in it that it is to be deemed to be a department within the meaning of the *Financial Administration Act* would incorporate all the provisions of that Act. The alternative would be to repeat the provisions of that Act, which surely no one would advocate.

Similarly, a statute providing for the making and revoking of orders might state that the *Interpretation Act* should apply to such orders; and this would incorporate the special rules in the *Interpretation Act* relating to the effect of repeal.

This form of referential legislation is in effect an amendment to the Act referred to. In the examples given, the identical results could be achieved by amending the *Financial Administration Act* or the *Interpretation Act*.

Of a similar character are the provisions of the *Crown Liability Act* applying certain enactments to the Crown. There is a provision, for example, that sections 645 and 647 to 653 of the *Canada Shipping Act* apply for the purpose of limiting the liability of the Crown in respect of Crown ships; this provision, in effect, amends the *Canada Shipping Act*.

BY ADOPTION IN THE REFERRING ACT

Another method, differing perhaps not so much in substance as in form, is to adopt in one Act the words of another by reference rather than repetition. The *Coastal Fisheries Protection Act*, for example, provides that all

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courts, justices and magistrates have the same jurisdiction with respect to offences under that Act as they have under sections 681 to 684 of the *Canada Shipping Act* with respect to offences under the *Canada Shipping Act*. The repetition of these provisions would have doubled the length of the *Coastal Fisheries Protection Act*.

BY GENERAL ACT

Some Acts are passed solely for the purpose of being adopted in other Acts and, unless Parliament otherwise provides, automatically become Part of another Act. For example, Part II of the *Small Loans Act*, which sets out certain corporate powers and limitations, applies to *every small loans company incorporated by special Act of the Parliament of Canada*. The *Bank Act*, the *Canada Corporations Act*, the *Pipe Lines Act* and the *Cooperative Credit Associations Act* contain similar provisions.

ADAPTATION

It is often not possible to incorporate other provisions without adaptation; the Act, or provision thereof, intended to be incorporated does not fit and must be tailored to suit the requirements of the new Act. The Act to be incorporated must therefore be carefully studied and considered in relation to the new Act. If possible, the changes should be precisely set out in the statute. For example, the *Veterans Benefit Act* applies to special classes of veterans of the armed forces certain Acts that by their own terms would not apply. One of the provisions is as follows:

- (1) Subject to subsection (2), the *Pension Act* applies to and in respect of
 - (a) every person who was enrolled for the purpose of serving in the special force, in respect of his service in the Canadian Forces under the terms of such enrolment, and
 - (b) every officer and man of the regular forces or reserve forces, in respect of his service in a theatre of operations on the strength of the special force,

as though such service were military service rendered during World War II within the meaning of that Act and as though the service described in paragraph 2(v) of that Act included service in a theatre of operations on the strength of the special force.

- (2) Subsection 13(2) of the said Act does not apply to or in respect of any death or disability for which a pension is payable by virtue of subsection (1) of this section.

To accomplish the same result by direct legislation would require forty-nine pages. Alternatively, the *Pension Act* itself could have been amended, but to cover the field of the *Veterans Benefit Act* (twelve pages in length), ten amending bills, each from two to five pages, would be necessary; aside from all the other considerations, the work of Parliament would be multiplied at least tenfold.

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Whenever possible, the particular provisions requiring adaptation should be identified and expressly changed; the statute can then be incorporated and applied with reasonable certainty.

It is not always possible to adapt, short of rewriting the whole Act to be incorporated. In these cases the Act is incorporated or made to apply *mutatis mutandis* or *with such modifications as circumstances require* or *so far as applicable*. Adaptation by general expressions of this character lacks precision and raises doubts. This may not be a serious objection where the statute does not affect rights or liabilities or is not likely to come before the courts.

An alternative method is to confer authority to make regulations for adapting. The regulations can then set out at length the manner and extent to which an Act must be altered to fit another Act.

REFERENCE TO ADOPTED ACT

The Act or provisions to be incorporated should preferably be identified by exact citation. Incorporation of the *provisions of* an Act *relating to* a subject-matter may leave doubt as to what has been incorporated. Similarly, if *all Acts relating to* a certain subject-matter are incorporated.

GENERAL

Whether referential legislation is proper or improper in any particular case depends on the circumstances. There is no doubt that, carried to extremes, this device can make legislation unintelligible. On the other hand, if all our statutes were written without references to other statutes, they would be almost as bad. After all, a set of statutes is not, and cannot be, a collection of isolated and unconnected enactments; it constitutes a body of law and rarely can a particular statute stand alone as a law by itself.

But legislation by reference should not be resorted to without a good deal of care and caution, and every effort should be exerted to make the law precise and intelligible. The possibility of employing some other device should always be kept in mind.

OTHER MATERIAL

Material other than statutes may be incorporated by reference. Thus, insurance Acts may incorporate commercial life tables; shipping and other Acts may incorporate international conventions or rules; industrial Acts may incorporate accepted industrial standards of construction or safety; food and drug Acts may incorporate standards for pharmaceutical preparations.

Referential legislation of this character presents problems. The incorporation of the text of the British Pharmacopeia, for example, in a statute is simply not feasible, and the necessity of having to incorporate extraneous material must be acknowledged. The first difficulty is that the law is not in the statute books. The reader — layman, judge or lawyer — must go elsewhere to find the law, and how can he be sure that he has a correct or authentic text? The second problem is whether the statute incorporates this material as it exists the day the statute is passed, or as it is amended from time to time? It

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could be one or the other, and whether the statute should clearly indicate one or the other will depend on the circumstances.

Sometimes the adoption of extraneous material is left to regulation so that amendments can be quickly made to keep the reference up to date. Sometimes the text of the material can be appended to the Act as a schedule, thus making the Act self-contained. This device is commonly employed in the case of statutes ratifying or implementing international agreements, conventions or treaties.

STATUTES OF OTHER JURISDICTIONS

There are occasions where the legislature of one jurisdiction adopts by reference the legislation of another legislative authority. For example, before the *National Defence Act* of Canada was enacted, the *Militia Act* provided:

The *Army Act* for the time being in force in Great Britain, the King's regulations, and all other laws applicable to His Majesty's troops in Canada and not inconsistent with this Act or the regulations made hereunder, shall have force and effect as if they had been enacted by the Parliament of Canada for the government of the Militia.

And in a federal state, one jurisdiction may adopt the laws of another. The *Criminal Code*, a federal statute, adopts for juries in criminal cases, the qualifications of jurors for juries established under provincial legislation in civil cases; and the *Crown Liability Act* applies to some suits against the Crown in right of Canada, provincial laws and procedure applicable to litigation in provincial courts between subject and subject.

The problems presented by referential legislation already discussed apply here as well. But there is a further problem; the question may arise whether a particular statute is legislation by reference or is an unlawful delegation of legislative authority.

LEGISLATION BY REFERENCE OR DELEGATION

It is not intended here to discuss the legal question whether a legislative body can delegate authority to make laws to another legislative body not of its own creation. Authority to legislate by reference does not seem to be disputed, but legal or constitutional difficulties are involved in delegation. From a drafting point of view, therefore, it is important to keep in mind the distinction between the two types of legislation.

In the case of referential legislation each legislature acts independently in the exercise of its own legislative authority; in the case of delegation, the authority to enact the legislation to be incorporated is derived from the other legislature and cannot stand on its own feet.

The Parliament of Canada, for example, has exclusive legislative jurisdiction to make laws in relation to criminal law, and the provincial legislatures have exclusive legislative jurisdiction to make laws in relation to property and civil rights. The Supreme Court of Canada has held that Parliament may not delegate its legislative authority to the legislatures, and *vice versa*. If

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Parliament enacted that the law of theft was to be such as the provincial legislatures might prescribe, and a legislature enacted a law of theft, the courts would undoubtedly hold the Act of Parliament *ultra vires* on the ground that it purported to delegate legislative authority to provincial legislatures; or that constitutionally the legislatures have no authority to make laws in relation to criminal law and Parliament cannot confer it.

On the other hand, Parliament has enacted in the *Criminal Code* that a person who is qualified as a juror according to the laws in force in a province is qualified to serve as a juror in criminal proceedings in that province. The validity of this provision is beyond dispute.

The distinction between the two instances is this: in the theft case, the legislatures have no authority to legislate on the subject — their only authority would purport to be derived from the Act of Parliament and the law to be enacted could have no independent existence. In the jury case, the legislatures, quite apart from any enabling federal legislation, have jurisdiction; they may make laws in relation to civil litigation setting forth the rules for qualifying jurors, and such laws operate in the provincial field without reference to any federal legislation; the authority is derived from the Constitution. Parliament may make laws in relation to criminal law; and a law stipulating that the rules for determining eligibility of jurors in criminal cases shall be the same as the rules established by the legislatures for determining eligibility of jurors in civil cases, is a law *in relation to criminal law*. The provinces have not made and have not purported to make laws *in relation to criminal law* — they have made valid laws in relation to property and civil rights. And Parliament has merely stated that the rules applicable to criminal cases shall be the same as the rules applicable to civil cases.

The test is this: in the absence of any federal legislation, is the provincial law a valid exercise of constitutional legislative authority? If so, then a reference to it in federal legislation cannot be delegation.

There are numerous examples in the statutes of Canada where provincial laws have been incorporated. In some instances it may have the appearance of an attempt at delegation and there may be instances where Parliament has in fact purported to delegate. To be on safe ground the principle should be that the laws or rules governing a federal matter are to be the same as the laws or rules made by a province in relation to a provincial matter. A law that no person shall smoke is a valid provincial law when enacted in relation to the operation of a saw mill, and a valid federal law when enacted in relation to the operation of an interprovincial railway. Referential legislation of the character under discussion should make it clear that what is intended is that the rule of law to be enacted by one legislature in relation to a subject within its jurisdiction is to be the same as the rule of law enacted by another legislature in relation to a subject within its jurisdiction.

It has been said that if legislation, as it exists on a certain day, is incorporated, that is legislation by reference; but if legislation, as it exists from time

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to time, is incorporated, that is delegation. It is submitted, as the foregoing discussion indicates, that this is not the test. Whether the law incorporated is a static or a changing law is simply a matter of construction. Thus, the former *Exchequer Court Act* incorporated provincial limitation laws, and the courts have construed this as incorporating provincial laws as they exist from time to time. In the *Crown Liability Act* the Crown is made liable for the damages for which, if it were a private person of full age and capacity, it would be liable in respect of a tort committed by a servant of the Crown; clearly the provincial law of tort as it exists from time to time is incorporated. The former *Militia Act* incorporated the English *Army Act* and regulations as in force from time to time. These are all examples of valid legislation by reference. The incorporation of a changing law does not necessarily involve delegation.

CHAPTER XIV

WORDS AND EXPRESSIONS

Abandon — Abandon *to* a person.

Abound — To abound *in* or *with*.

Absent — To absent *from*; to be absent *from*.

Abovementioned }

Aforementioned }

Aforesaid }

— Vague terms of reference. A specific reference to a particular section, or if that is not possible, a reference to *this Act*, is usually better. Definitions may also be used — if the *above men-*

tioned court means a particular court, a clause defining *court* could be added. Sometimes the thing that is supposed to have been *mentioned* or *said* somewhere *above* or *afore* has in fact not been mentioned or said; and sometimes a referential term is wholly unnecessary.

Absolve — To absolve *from* or *of*.

Abstain — To abstain *from*.

Abut — To abut *on* or *upon*.

Accede — To accede *to*.

Acceptable — To be acceptable *to*.

Access — To provide access *to*.

Accessory — An accessory *to*.

Accommodate — To accommodate (fit, adjust) *to*;

To accommodate (furnish, provide) *with*.

Accompanied — *With* things; *by* persons.

Accord — Accord *with* (harmony);

Accord *to* (agree).

Accordance — In accordance *with*.

According — According *to*.

Account — On account *of* (reason); to account *for* a thing; to account *to* a person.

Accountable — *To* a person; *for* a thing.

Accuse — Accuse *of* an offence; *by* a person.

Acquaint — To acquaint *with*; acquaintance *with*.

Acquiesce — To acquiesce *in*.

Acquit — To acquit *of*.

Adapt — To adapt *to*.

Add — To add *to*.

Addicted — Addicted *to*.

Address — To address *to*.

Adhere — To adhere *to*.

Adjacent — To be adjacent *to*.

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Adjourn — To adjourn *to* a day; *at* a time; *for* a purpose.

Adjusted — Adjusted *to*.

Admission — *To* for access; *with* for entrance.

Admit — *To* for permit to enter or to acknowledge; *of* for solution.

Affiliate — To affiliate *with*.

Affinity — *Between* persons; *with* another.

After — An adverb, preposition, conjunction and adjective. The adverbial use is rare in legislation, although it is occasionally found in combination with *there*, as *thereafter*. As a preposition it is used to form an adverbial phrase expressing time; the sentence predicate operates *after* something has been done or has happened. As a subordinating conjunction it introduces an adverbial clause expressing time. The clause and phrase form part of the case, and may be interchanged; *after his having become entitled, after he has become entitled*.

Afterwards — A vague adverb expressing time. The word may refer to a point of time in relation to the commencement or operation of the statute, or in relation to the happening of events described in the statute; it is usually better to sever *-wards*, and substitute an appropriate phrase or clause.

Agree — *With* a person; *to* proposals; *upon* terms or conditions.

Agreeable — Agreeable *to*.

Already — An adverb expressing a point of time. It should, as a rule, be avoided — does it refer to the passing of the Act, or to something done after the Act was passed? The point of time intended to be referred to should be more accurately fixed.

Alteration — Alteration *in* (document); alteration *to* (building).

Amalgamate — *Into* or *with*.

Amenable — *To*.

Among, amongst — The authorities appear to condemn *amongst*, yet the word hangs on in legislation. To *divide amongst* seems to be a little clearer than to *divide among*; in all other cases *among* is probably to be preferred.

Analogous — Analogous *to*.

And — A co-ordinating conjunction. Misused when the sentence elements to be joined are not equals. In *every person being of the age of 21 years and who resides*, the *and who resides* should be changed to *and residing*; in *every person summoned and in attendance*, a participle is joined to a phrase — it should be *every person who has been summoned and is in attendance*.

Sometimes misplaced or improperly omitted in enumerations. In *co-operative society, mutual benefit association, charitable and fraternal corporation*, an *and* is required before *charitable*. *The inspector may enter, search the premises, seize, and open any package* should be *may enter and search the premises and seize and open any package*.

And/or — This symbol should never be used. There is no need for it, and it usually creates ambiguity.

In definitions there is generally a choice between *and* and *or*. “*Animal*” means *cow, horse and sheep*; “*animal*” means *cow, horse or sheep*. The two forms have identical meanings; in the one case *animal* is regarded as meaning all of the

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things enumerated, and in the other *animal* is regarded as meaning any one of the things enumerated.

In an enumeration of duties or powers either conjunction is generally adequate. If *or* is used, no one would seriously urge that if one enumerated duty or power is performed or exercised, the remainder vanish; and if *and* is used, no one would say that an enumerated duty or power cannot be exercised or performed except simultaneously with all the others.

If alternative conditions are imposed, *unless A, B, or C; if A, B, or C*, it is generally not necessary to provide for *A and B*, or *A and C*, or *B and C* or *A, B and C*; one alone is enough to satisfy the statutory condition.

In the rare case where there is doubt, suitable expressions such as *all or any* or *one or more* can be used.

And then only — A common expression in ordinary speech, but to be avoided in legislation. It is intended to introduce an additional rule with reference to time and circumstances previously described; it is objectionable because it depends for its meaning on imagination rather than on words. *No person shall fish without a licence, and then only with a line*. The *then* refers to the time of fishing, but no time is mentioned; and, worse still, it may be construed as referring to fishing without a licence. *No person shall fish at sunrise without a licence, and then only with a line*, is a little better, but it still carries with it the suggestion that prohibited fishing is permitted. *No person shall fish, and then only with a licence* is worse, but not unknown.

The difficulty lies in attempting to fuse two independent rules; *No person shall fish without a licence*, and *No person shall fish otherwise than (except) with a line*.

And which — It is not necessary here to deal with the complicated rules regarding *and* and *which*, except to say that, grammatically, *and which* is often wrong. If it is remembered that the conjunction *and* is co-ordinating, that it joins sentence elements of equal value, and that in legislation the defining relative *that* is in most cases to be preferred to the parenthetical *which*, the *whiches* will disappear without any conscious assistance from the draftsman and there will be no *and* *whiches*.

Annex — To annex *to*.

Answer — To answer *for* (account); to give an answer *to*.

Any — A tiresome word in legislation. Many *anys* can be replaced by *a* or *an* with better effect.

Anything, any thing — The distinction between *anything* and *any thing* must be kept in mind. Statutes sometimes refer to things, e.g. to possess, seize, destroy things, and a reference to one of these things should be *any thing* rather than *anything*; the stress on the particular article should be preserved.

Appeal — To appeal *to* a court *from* a decision.

Apply — To apply or be applicable *to*.

Apportion — *To, among, between*.

Approve — Approve and approval *of*.

Approximate — *To*.

As if, as though — Followed by the subjunctive, establishes a legal fiction. *The provisions of (another Act) apply as if (as though) they were re-enacted in this Act*.

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Assent — To assent *to*.

Attach — To attach *to*.

Because — May imply reason, sake, purpose. *By reason of, for the reason that, on the ground that* or similar expressions are generally better. See *By reason only*. There is ambiguity with a negative. Thus, *He did not fail because* can mean either that he succeeded for the stated reason, or that he failed but not for the stated reason.

Belong — To belong *to*.

Bestow — To bestow *on* or *upon*.

Bind, bound — To be bound *to* do something; to bind *by* agreement; an agreement is binding *upon* or *on* a person.

Border — *On, upon*.

But so that — To introduce a predicate modifier specifying the mode in which something is to be done. Thus, to divide between A, B, and C, *but so that* each receives at least a quarter. But not *but so that* A receives nothing.

By reason only — Frequently more precise than *because*. To say a person is ineligible *by reason only of age* implies that on all other counts he is eligible; to say he is ineligible *because of age* merely specifies one ground of ineligibility and does not necessarily exclude other possible grounds. *Because only* will hardly do, and *only because* might in certain contexts mean *for the sake of* or *for the purpose of*.

Capable — To be capable *of*.

Care — To care *for* a thing.

Charge — *on* a fund, *against* a person, *with* an offence, *to* an account.

Coincide — To coincide *with*.

Collective nouns — A collective noun is singular even though it comprises more than one. *The committee has power*. But usages differ. In Britain *government* is plural, but singular in Canada.

Communicate — Communicate information *to* a person; communicate *with* a person.

Compare — To compare *to* (quality); compare *with* (illustration).

Comply — Comply and compliance *with*.

Composed — To be composed *of*.

Compound subjects — Normally a compound subject takes a plural verb. *The Minister and his Deputy are authorized*. But there are difficulties where two combined nouns may form a single concept. *The ship and cargo is (are?) forfeited*. Regarded as one entity, the verb should be singular; regarded as separate, it should be plural.

Concede — *To*.

Conceive — *Of*.

Concur — *With* a person; *in* a course of action.

Confer — To confer *on* or *upon* a person (bestow); to confer *with* (discuss).

Conform — To conform *to*.

Conjunctions — The principal co-ordinating conjunctions encountered in legislation are *and, but, or, nor*. Co-ordinating conjunctions join sentence elements of equal value.

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Subordinating conjunctions are used to join dependent clauses, especially adverbial clauses expressing the case — reason, time, place, conditions, etc. The principal subordinating conjunctions are *after, although, as, as if, as long as, as often as, as soon as, as though, before, for the purpose of, if, in case, in order that, notwithstanding, so that, such as, unless, until, when, where, while, with a view to*.

Correlative conjunctions come in pairs; *not only...but also; though...yet; whether...or; either...or; neither...nor; both... and; so...as; if...then; as...as*.

The pronouns *who, which, what, that* also have conjunctive uses.

Some adverbs serve as subordinating conjunctions — *nevertheless, notwithstanding, accordingly, moreover, therefore* — but must be preceded by a semicolon or other stop of higher value, or, in some cases, by a regular conjunction.

Consent — To consent *to*.

Consign — To consign *to*.

Consist — To consist *in* (to have its being in); to consist *of* (to be made up by or composed of).

Consistent — To be consistent *with*.

Contained — In expressions like *Notwithstanding anything contained in this Act* the word *contained* can be omitted. *Contained in this Act* is usually better than *in this Act contained*.

Contend — To contend *with* or *against* (struggle); to contend *about* (argue).

Contiguous — To be contiguous *to*.

Contrary — To be contrary *to*.

Convict — To convict *of* an offence.

Correspond — Correspond *to* (similar in character or function); correspond *with* (agreement, harmony).

Covenant — *With* a person; *for* a thing.

Deal — To deal *in* a thing; *with* a person.

Debar — To debar *from*.

Deemed — Used to establish legal fictions. For a statutory purpose it is often necessary to *deem* a thing to be something it is not. Also used negatively to declare that a thing is not something it is, but the difference between *shall not be deemed* and *shall be deemed not* should be noted. *Shall not be deemed* should be used only where a previous deeming is denied; *shall be deemed not* is used to establish a negative fiction that can stand on its own feet.

Also used in the sense of considering — *as he deems necessary*.

Defend, Defence — Defend or defence *against* a claim; defend *from* danger.

Deficient, Deficiency — A deficiency *of* an amount; *in* an account; deficient *in*.

Defraud — To defraud a person *of* a thing.

Demand — To demand *of*.

Depend — To depend (be dependent) *on* or *upon*.

Deprive — To deprive a person *of* a thing.

Derogate — To derogate *from*.

Desirous — To be desirous *of*.

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Desist — To desist *from*.

Detach — To detach *from*.

Deviate — To deviate *from*.

Devolve — To devolve *on* or *upon*.

Differ — *With* a person in opinion; *from* a person or thing in characteristics.

Difference — It should be remembered that there are negative and positive differences. A direction that a debtor should pay the *difference* between the debt and the amount realized from a sale of assets would, strictly speaking, require the debtor to pay even where the proceeds of sale exceeded the debt; instead of *paying* the difference, the debtor should *receive* it. It is better to legislate in relation to the quantity by which one amount exceeds or is less than the other.

Different — Different *than* and different *to* are considered by some authorities to be correct in some contexts; *different* is usually followed by *from*.

Difficulty — *In*.

Diminish — *From*.

Diminution — *Of*.

Disabled — To be disabled *from* doing something; to be disabled *in* a certain respect.

Disapprove — To disapprove *of*.

Dispense — To dispense *with*.

Dispose — To dispose *of* a thing; to be disposed *to* do something.

Dispossess — To dispossess *of*.

Disqualify — *From* a thing; *for* a reason.

Dissatisfied — To be dissatisfied *with*.

Dissent — To dissent *from*.

Distinct — To be distinct *from*.

Distinguish — To distinguish *from* a thing; *between* things.

Distrain — To distrain (goods) *for* a debt; *upon*, or *on* a person or thing. See *Levy*.

Divest — To divest *of*.

Divide — *Between* two; *among* (*amongst*) many.

Due to — Should not be used without the verb *to be*, either expressed or understood, and, of course, there must also be a noun to which it is attached. In *Where, due to circumstances beyond his control, the debtor has defaulted*, the *due to* should be changed to *owing to*, *because of*, *by reason of*. In *Where the default of the debtor was due to circumstances beyond his control*, the *due to* is correct.

Emerge — To emerge *from*.

Employ — To employ *in* an activity; *on* or *upon* a work.

Encroach — To encroach *on* or *upon*.

Endow — To endow *with*.

Engage — To engage *in* a business, *with* a person, *for* a purpose.

Enter — To enter *on* or *upon* premises or a venture; *into* a building or contract.

Equal — To be equal *to*.

Equivalent — To be equivalent *to*.

Except — In *A except B and C*, have we $(A - B) + C$ or $A - (B + C)$? Careless use of *except* may cause ambiguity. *Except* should not be used as a conjunction to

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introduce a clause — *except the Minister otherwise orders* — in place of *unless*. The correct conjunction is *except that* as in *except that the Minister may otherwise order*.

Excepting — Should not be used as a conjunction — *except* will do.

Exception — An exception *from, to* or *against*.

Exclude — To exclude *from*.

Existing — Should not be used as a reference to the time of the passing of the Act. Statutes are always speaking, and *existing* therefore means the time the statute is being read. It is senseless to apply an enactment to an *existing* company — it couldn't apply if the company did not exist.

Exposed — To be exposed *to*.

Following — A reference to the *following* section, or the *next following* section may be ruined if Parliament inserts a new one. A reference to the section by number is safer and is easier to see if numerals are used. Useful as a reference to time; if a month has been mentioned, reference can be made to the *next following* month; *next following* is better than *following*.

Forthwith — A vague term, but sometimes necessary where an exact time for doing something cannot be prescribed. Would probably be construed to mean as soon as it can reasonably be expected to be done, or as soon as it is practical. *As soon as possible (practicable)* would seem to be more stringent. Not ordinarily objectionable in administrative provisions where the direction is aimed at officials; may be difficulties where litigation or prosecution involved.

Free — Used as an adjective, to be free *of* or *from*; used as a verb, there is a distinction. If a kite is disentangled from a tree, it has been *freed from* the tree, and the tree has been *freed of* the kite.

Future — The expression *future Act* should not be used to mean an Act to be enacted in the future. Since the law is always speaking there cannot be at the time of reading any such thing as a future Act.

Guilty — To be guilty *of* an offence.

Happen — To happen *to* a person or thing; *on* a place.

Hereafter — Should be avoided as a reference to time subsequent to the passing of the Act. Expressions like *after the passing of this Act, after the commencement of this Act, after the day this Act comes into force* are better.

As a reference to subsequent provisions of the Act should be replaced by a specific reference to a subsection, section or Part, or by a general reference to *this Act*.

Herein
Hereinafter } — It is better to use more exact references — *in this section, Part, Act,*
Hereinbefore } etc.

Heretofore — See *hereafter*. Time prior to the enactment of the statute can be more accurately described.

Hinder — To hinder *from*.

If — A subordinating conjunction used to express the case or part thereof. It denotes a condition, which may be precedent, existing or subsequent. Can frequently be replaced by *where, when*, etc., and can sometimes be converted to a subject

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modifier. Thus — *If any person violates this Act, such person is liable*, can be expressed as — *Every person who violates this Act is liable*.

Impervious — *To*.

Impose — *On* or *upon*.

Inaccessible — *To* be inaccessible *to*.

Incapable — *To* be incapable *of*.

Incorporate — *To* incorporate *into* or *with*.

Inconsistent — *To* be inconsistent *with*.

Independent — *To* be independent *of*.

Indifferent — *To*.

Influence — *Over*, *with*, *on*.

In respect of }

In relation to } — A convenient phrase to introduce a subject-matter about which
In regard to } something is being or may be done, as for example, in *make regulations in respect of*.

In speaking of the application of Acts, the preposition *to* is generally used in relation to persons — *this Act applies to railway companies* — or areas within the jurisdiction of the legislative body — *this Act applies to the Northwest Territories*. But in relation to things, and to places outside the territorial jurisdiction, *in respect of* or a similar expression is preferable.

Inroad — *Into*.

Interfere — *To* interfere *with*.

Intermeddle — *To* intermeddle *with*.

Intervene — *Between*.

Invest — *To* invest a person *with*; to invest money *in*.

Join — *To* join *to* (addition); to join *with* (be a party to).

Last preceding — As a section reference, see *Following*. May be used to refer to time — e.g. *last preceding week*, where the week constituting the starting point has been identified.

Less than ... more than — Involves a trap. A rule for *less than A* and another for *more than A* leaves *A* unprovided for. To include *A*, it should be *A or less* and *more than A*, or *less than A* and *A or more*, depending upon the group into which *A* is to be placed.

Levy — A levy *of* an amount; to levy a tax *on* or *upon*; to levy execution, distress, a fine. To levy a *distress upon* is archaic. See *Distress*.

Made — Made *of* straw.

Mediate — *Between* persons; *on* an issue.

Mingle — Mingle *with*.

Mix — *To* mix *with*.

Namely — Used to introduce an enumeration with the effect of a definition. *A tradesman, namely, a carpenter, bricklayer or plumber*, this is, in effect, a definition of *tradesman* and enables the draftsman, in other places in the sentence, to use one word instead of three.

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Other enumerations — powers, duties, predicates, etc. — are also introduced by *namely*. Other expressions can similarly be used — *that is to say*. Expressions like *viz.* or *to wit* should be avoided.

Necessary — To be necessary *to* a person; *for* a purpose.

Need — To have need *of*.

Negotiate — To negotiate *with*.

Next following — See *Following*.

No person, no one, none — Negative pronouns of totality, used to express a universal prohibition — *No person shall*.

When *no* qualifies the subject of a sentence then the grammatical meaning is that the verb is qualified by *not*.

Notwithstanding — A preposition, adverb and conjunction. As a preposition it is used to introduce a phrase modifying the predicate — *he may, notwithstanding his failure to comply with this section* — or to modify the operation of the whole enactment — *Notwithstanding section 10*. Its purpose is to override a conflicting provision.

As a conjunction it is used to introduce a subordinate adverbial clause, *he may, notwithstanding that he has failed to comply with this section*.

Rarely used in legislation as an adverb.

Now, Next — Although the *Interpretation Act* provides that these two words shall be construed as having reference to the time when the enactment was enacted, it is better to refer to a specific date or the *commencement* or the *coming into force* of the enactment.

Number — The number of the subject governs, whatever may be the number of the complement. *Regulations are the authority. The authority is the regulations*.

If alternative subjects are a mixture of singular and plural nouns, the normal rule is to use the number of the noun nearest the verb.

Object — To object *to* or *against*.

Offend — To offend *against*.

Offensive — *To*.

Offer — To offer *to*.

Opposite — Opposite *to*.

Or — See *And*.

Otherwise — An adverb that is sometimes used as a conjunction to connect two independent clauses. In legislation it is used to postulate the opposite of a stated rule — *no person shall drive recklessly, otherwise he shall be liable*, etc. This use should be avoided. It is better in all cases to state the opposite, rather than to hint at it by *otherwise*. But it is proper to use it if the opposite rule is not left to inference, as in, *unless the Minister otherwise prescribes*.

Otherwise than — This expression is useful to specify one predicate modifier and expressly exclude all others. *No person shall shoot game birds otherwise than with a shot-gun*. It specifies a mode in which something may be done, at the same time excluding all others. *Except* may sometimes be used with the same effect.

Parcel — To parcel *out*.

Part — To part *from* (depart); to part *with* (relinquish).

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Partake — To partake *of*.

Partial — Partial *to*.

Participate — Participate *in* a venture.

Peculiar — Peculiar *to*.

Penetrate — Penetrate *into*.

Persevere — Persevere *in*.

Pertain — To pertain *to*.

Possessed — To be possessed *of*.

Practicable — Capable.

Practical — Useful.

Preceding — See *Following*.

Prefer — Prefer *to, before, above*.

Preferable — Preferable *to*.

Preference — Preference *to, over, above, before*.

Prepare — To prepare *for* an event; *against* a danger.

Prepositions — Prepositions are used to form adverbial or adjectival phrases; some prepositions (*after, before, since, until*) are also conjunctions, joining a dependent clause.

When forming adverbial phrases, prepositions indicate reason, time, purpose, result, place, condition, etc.

Prepositions take a noun or pronoun as an object to form a phrase. The principal prepositions are *about, above, across, after, against, along, among, at, before, below, beneath, between, by, down, during, for, from, in, inside, into, like, near, of, off, on, onto, outside, over, since, through, throughout, to, toward, under, until, unto, up, upon, with, within, without*.

Prevail — To prevail *on, upon, with* (persuade); to prevail *over, against* (overcome).

Prevent — To prevent *from*.

Previous — Previous *to*.

Productive — Productive *of*.

Profitable — Profitable *to*.

Pronounce — *Against* a person; *on* a thing.

Protect — Others *from*; ourselves *against*.

Provide — Provide *with, for, against*.

Provided — As a subordinating conjunction (with or without *that*) can always be replaced by *if*, with better effect. As legal jargon, see Chapter IX. As participle, used in expressions like — *except as provided in this Act*.

Provisions — Can usually be omitted in expressions like *subject to the provisions of this Act, notwithstanding the provisions of this section*. The phrase *the provisions of* is usually redundant.

Purge — To purge *of, from*.

Pursuance — In pursuance *of*.

Pursuant — Pursuant *to*.

Reconcile — To reconcile *to* a thing; things *with* each other.

Refrain — *From*.

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Regard — To have regard *for* (feeling) a person; *to* facts (have in mind).

Relate — Relate *to*.

Release — Release *from*.

Relieve — Relieve *from* a duty; *against* a forfeiture.

Rely — Rely *on* or *upon*.

Remove — Remove *from*.

Resemblance — *To* a person or thing; *between* persons or things.

Said — In the *said person* the simple *that* (or *those* for the plural) is usually better. *Said* is not inherently bad, but too many *said*s make the sentence sound too legalistic. Often *that* or *the* is sufficient identification and often no reference back is necessary. But *the said person* is better than *said person*.

Said should not be used to refer to something outside the section. Sentence openers like *The said inspectors appointed in manner aforesaid* can surely be improved.

Shall — An auxiliary verb, expressing futurity or obligation. Future verbal forms are rarely necessary since a statute is always speaking. The imperative *shall* should be used only where a person is commanded to do something. Where there is no person (*this Act shall apply*) or no command (*every person shall be entitled*) the present indicative should be used.

Shall is sometimes intended to be directory only. For example, a statute may permit an appeal and then go on to say that *notice of appeal shall be filed within thirty days*. The *shall be filed* is not a command to file, but a direction to file if the appeal is taken. Alternatively, one could say the notice *must be filed*, or, better still, that the person *may appeal by filing a notice of appeal*. See also Chapter II.

Similar — To be similar *to*.

So — Useful to abbreviate the principal predicate if it needs to be mentioned again in the sentence. *The executor shall not distribute if a creditor objects, but he may do so if the court approves. A contract may be ratified at a general meeting of shareholders, and a contract so ratified is binding on the company*. A doubtful though not uncommon use is — *the executor may acknowledge a debt that has been proven as prescribed in this Act, and a debt so acknowledged*. The *so acknowledged* implies that a procedure for acknowledgement has been prescribed and complied with, but it hasn't.

Split infinitive — There is no valid reason why an infinitive should not be “split” if that will express exactly the desired shade of meaning. The only risk is that the draftsman will be criticized.

Subject — To be subject *to*; to subject *to*.

Subject to — Used to assign a subordinate position to an enactment, or to pave the way for qualifications.

Where two sections conflict, and one is not merely an exception to the other, the subordinate one should be preceded by *subject to*; this reconciles the conflict and serves as a warning that there is more to come.

It may be desirable to state as a general rule the principal theme of the Act — *Every person is entitled* — but to ensure that the rule does not operate unless other provisions are complied with, the rule should be made *subject to* the Act or to other named sections.

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Where two sections conflict there is frequently a choice between *subject to* in one section, and *notwithstanding* in the other section.

Subject as aforesaid, } Vague references. See *Aforesaid*.
Hereinafter provided }

Submit — To submit *to*.

Substitute — To substitute *for*.

Subtract — To subtract *from*.

Such — Carelessly used, *such* can cause trouble. In *A person over the age of sixteen who resides in Canada and has made an application is eligible, but such person, does such* carry with it all the modifiers of *person* — who is *such* person? *Such* is not a satisfactory demonstrative where the noun to which it refers has modifiers.

Frequently *such* adds nothing and can be omitted or replaced by *that* or *the*.

The conjunctive use *such ... as* is usually not objectionable — *Such rules as are prescribed*.

Such should not be used to refer to something outside the section. The following examples are taken from actual statutes —

The neglect or refusal by any *such* officer to pay over any public moneys *aforesaid* in his hands, or to transfer or disburse any *such* moneys promptly, on the requirement of the Postmaster General, shall be prima facie evidence of *such* conversion to his own use of so much of *such* public moneys as is so in the hands of *such* officer.

Where a municipal by-law of a city or town prohibits *such* sounding of the whistle or *such* ringing of bell in respect of any *such* crossing or crossings within the limits of *such* city or town, *such* by-law shall, if approved by an order of the Board, to the extent of *such* prohibition relieve the company and its employees from the duty imposed by this section.

Such is not inherently bad, but it should be used only in circumstances that leave no doubt as to its meaning. And too many *suches* make the sentence sound too legalistic.

Suitable — To be suitable *to* a person; *for* a purpose.

Suspected — To be suspected *by* the police; *of* a crime.

Tend — Tend *to* or *towards*.

That — See *which* and *and which*. Care should be exercised in repeating *that*. In *An agreement that was entered into before the commencement of this Act and that provides* the second *that* should be omitted because it would then not be clear whether there are two subjects or only one. Similarly with *who*.

As a demonstrative *that* can often replace *such* or *said*.

That is to say — See *Namely*.

Thereunto appertaining — Somewhat archaic. In *all the provisions of the Act thereunto appertaining*, it would be better to substitute *pertaining (or relating) thereto*.

Thereupon — A useful adverb pin-pointing a moment of time. Having described an action, the time of the action can be expressed by *thereupon*, thus avoiding repetition. Also used with the same effect after a semicolon as a conjunctive adverb.

This, those, these — *This* section, *these* sections, *those* sections, *those* persons, instead of the *said, such, etc.*

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Till — An honest preposition or conjunction, the equivalent of *until*. Sometimes erroneously regarded as an abbreviation of *until* — indeed, one sees occasionally *'til*. Better, perhaps, to say *until*.

Transmit — Transmit *to*.

To wit — Archaic legal jargon. There is no need for the phrase in modern legislation. See *Namely*.

Unless and until — Needed occasionally to ensure that an expressed condition is a condition precedent.

Useful — *To* a person; *for* a purpose.

Value — To place a value *upon*.

Vest — To vest property *in* a person; to vest a person *with* authority.

Viz. — Objectionable on two grounds. It is a foreign word and an abbreviation.

Whatsoever, wheresoever, whosoever — Archaic forms. *Whatsoever* is usually an unnecessary addition, but if needed a more modern expression, like *of anykind*, should be used. *Wheresoever* and *whosoever* if needed can be changed to *wherever* and *whoever* respectively. In legislation *Every person who* is usually better than *whoever*.

Where, when — Subordinating conjunctions. The classic advice is to use *where* for cases of frequent occurrence, and *when* for the rare. But what is frequent and what is rare is indeterminable. They are usually interchangeable, but where the event contemplated can happen only once, *when* is better — *when this Act is assented to, when the testator dies*.

Which — See *And which*. The better defining relative is *that* rather than *which*. A *which* clause is preceded by a comma and does not define — a *that* clause follows without a comma and is defining.

A difference in meaning may result from the use of *which* for *that* and *vice versa*. In *a certificate that the Minister may issue* the certificate is defined as one that the Minister has power to issue; hence, one must look elsewhere to find the authority for issuing the certificate. But in *a certificate, which the Minister may issue*, the certificate is not defined, and the words *which the Minister may issue* confer power on the Minister to issue the certificate.

Whichever — Useful in the form *A or B, whichever is the greater*.

Whilst — Archaic form of *while*.

Who, whom — The wrong case is sometimes used. In *A constable may arrest any person whom he has reason to suspect has committed an offence*, the pronoun is the subject of *has committed* and not the object of *suspect*; it should therefore be *who*. But in *may arrest any person whom he finds committing an offence*, the pronoun is the object of *finds*, and *whom* is correct. Also correct is *whom he suspects of having committed an offence*, where *whom* is the object of *suspects*.

Will — Should not be used for *shall*.

With respect (regard) to — See *in respect of*.

BOOK TWO

**LEGISLATIVE
FORMS AND PRECEDENTS**

FOREWORD TO THE FIRST EDITION

Although for want of a better title the material contained herein has been called "Forms and Precedents", it is not expected that any of the examples given will be copied without careful scrutiny to see if it will do the job intended; nor is it suggested that the forms are not capable of improvement.

Every draftsman is constantly searching for precedents. If the provision he wishes to write or something close to it has already been written, he can save himself a good deal of time and trouble if he can find it. He may be able to use it, either as it is or with adaptations, or, if it does not fit, it may serve as a source of ideas for a new provision. Also, there is some virtue in consistency and it may be desirable within the one jurisdiction to use the same words to say the same thing, even in another statute.

Over the years I have collected many provisions from statutes and regulations that I thought might make useful precedents. These I have had pasted or typed onto cards and have indexed them according to subject-matter. In this form, however, the collection cannot be used by more than a few people at one time, and is not readily available to all who may wish to use it. I have therefore taken a few of the more common or important subjects and put them into this present form. They are thus more readily available to all draftsmen in the Department, and an opportunity is also afforded to me to make a few observations here and there that may be helpful.

This collection is of course intended primarily for the use of officers of the Department of Justice in the preparation of legislation for the Parliament of Canada or regulations thereunder. It may be, however, that some of this material might be of use or interest to others.

It must be emphasized again that the sections or portions thereof quoted in the text, although taken for the most part from actual statutes, are intended to serve as source material for ideas rather than as forms or precedents to be strictly followed. The draftsman should of course make such changes in form as may appear desirable.

OTTAWA, December 1, 1963.

BOOK TWO

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BOOK TWO

LEGISLATIVE FORMS AND PRECEDENTS

CHAPTER I

FORMALITIES

1. Long Title

A long title is now an indispensable part of a bill or a statute. Originally, statutes did not have titles, although printers and editors, for convenience of reference, divided the statutes into chapters with appropriate titles. At one time, therefore, a title was not regarded as part of an Act; but it is firmly established now that the title is part of an Act and may be referred to in aid of construction.

Strict parliamentary rules have been developed in the United Kingdom as to the contents of a bill in relation to its title. Where a bill is founded upon resolutions reported from a committee of the whole, the title must correspond with the order of leave; and where a bill is presented without an order of leave, the title must correspond with the notice of presentation. The title, therefore, must accurately define the scope of the bill, and an amendment is out of order unless it falls within the scope as defined in the title. The titles of United Kingdom Acts therefore fairly indicate the contents, and usually include some broad general words capable of embracing a wide range of provisions related to the main purposes of the bill. For example, the long title of the *Crown Proceedings Act, 1947* is

An Act to amend the law relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown, to amend the law relating to the civil liabilities of persons other than the Crown in certain cases involving the affairs or property of the Crown, and for purposes connected with the matters aforesaid.

At one time the United Kingdom parliamentary rules respecting titles to bills were closely followed in Canada, but lately there has been considerable relaxation. A wide range of discussion is permitted on any bill, even though it may not be strictly relevant to the terms of the bill, and amendments are generally permitted even though they do not fall strictly within the terms of the bill. The result is that titles have become shorter and more general. For example, the long title of the *Crown Liability Act*, which corresponds to the United Kingdom *Crown Proceedings Act*, is

An Act respecting the liability of the Crown for torts and civil salvage

The term *respecting* is broad in scope, and is probably adequate to include almost any provision pertaining to the subject-matter. The following are some examples of long titles now in use:

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An Act respecting the Canadian Forces.

An Act respecting the export and import of strategic and other goods.

An Act to establish an account for the replacement of government property lost, destroyed or damaged through fire.

An Act respecting banks and banking.

An Act respecting the Criminal Law.

An Act to amend the Customs Act.

An Act to amend the National Parks Act.

An Act to amend the Patent Act.

2. Short Title

The first section of an Act (other than an amending Act) is the short title. Amending Acts do not, as a rule, have short titles, the reason being that, under the terms of the *Interpretation Act*, they are to be construed as one with the Act amended thereby, and there is rarely an occasion for referring independently to the amending Act.

A short title should be short. There is no advantage in a second title if it is as long as (or longer than, as is sometimes the case) the long title. Some examples are as follows:

Admiralty Act

Aeronautics Act

Bankruptcy Act

Canadian Commercial Corporation Act

Department of Justice Act

Length and Mass Units Act

Maritime Marshland Rehabilitation Act

Royal Canadian Mounted Police Act

Yukon Administration of Justice Act

In Acts of the Parliament of Canada short titles are written in italics. The definite article preceding is not regarded as part of the title and accordingly is not italicized or capitalized. Other jurisdictions have different practices. The form is therefore:

This Act may be cited as the *Public Service Employment Act*
and not

This Act may be cited as *The Public Service Employment Act*

Difficulties arise with the apostrophe, as indicating the possessive case. For example:

Canadian Fisherman's Loan Act

Companies' Creditors Arrangement Act

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Farmers' Creditors Arrangement Act
Governor General's Act
Lord's Day Act
Prime Minister's Residence Act
Veterans' Land Act
Veterans Rehabilitation Act
War Veterans' Allowance Act

There is no doubt that the apostrophe is a nuisance, and it may well be better to sacrifice a grammatical rule for convenience. In some cases an apostrophe is clearly incorrect, as in *Governor General's Act*. The Act is not one that *belongs* to the Governor General; if it *belongs* at all, it belongs to Parliament or to the people.

In other cases, an apostrophe is clearly correct, as in *Lord's Day Act*. The day to which the Act pertains is the *Lord's Day*.

In many cases there is genuine doubt. Which of the following is correct?

- (1) Department of Veterans' Affairs Act
- (2) Department of Veteran's Affairs Act
- (3) Department of Veterans Affairs Act
- (4) Department of Veteran Affairs Act

The Department pertains to the affairs of veterans. They may be described as *veterans' affairs*, using the genitive, or as *veteran affairs*, using veteran as an adjective. The singular genitive *veteran's affairs* would hardly do, but the plural in the adjective form, *veterans affairs* might pass. Accordingly, numbers (1) and (4) above, and possibly also (3) would be correct; numbers (3) and (4) escape the apostrophe nuisance.

The short title of an Act in the Revised Statutes of Canada is

Canadian Fisherman's Loan Act.

But the short title of another is

Merchant Seamen Compensation Act.

The difference arises because the former is regarded as an *Act* (and not a *Loan Act*), but the latter as a *Compensation Act*. If *Loan* is regarded as belonging to *Fisherman*, the relationship between the two words can be expressed by the genitive; both words are used as nouns. What is meant is

Canadian (Fisherman's Loan) Act.

But this can be read

Canadian Fisherman's (Loan Act).

If the statute is regarded as a *Loan Act*, we can get rid of the apostrophe by converting the noun, *fisherman*, in the genitive case, to adjective.

Canadian Fisherman Loan Act.

Canadian Fishermen Loan Act.

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The second of the two Acts mentioned is clearly regarded as a *Compensation Act*.

Merchant Seamen (Compensation Act)

and not as

Merchant (Seamen's Compensation) Act.

Not all titles can be given this treatment, as, for example, the following:

Prime Minister's Residence Act.

While we readily admit expressions such as *Loan Act*, *Compensation Act*, we are hardly prepared to sanction *Residence Act*.

But what can be done with

Farmers' Creditors Arrangement Act?

If we change it to

Farmer Creditor(s) Arrangement Act, or

Farmer-Creditor Arrangement Act

we improperly imply that the farmer is the creditor. The title is probably satisfactory; the genitive *Farmers'* can hardly be construed to go beyond *Creditors*.

Short titles sometimes include explanatory material in parenthesis.

Northern Pacific Halibut Fishery (Convention) Act

Pelagic Sealing (Provisional Agreement) Act

Privileges and Immunities (North Atlantic Treaty Organization) Act

Privileges and Immunities (United Nations) Act

Visiting Forces (British Commonwealth) Act

Visiting Forces (North Atlantic Treaty) Act

Visiting Forces (United States of America) Act

Parentheses also can be nuisances, particularly when speaking the title. They are intended to be visual aids, but they are lost when the title is spoken or read. Moreover, the insertion of additional material parenthetically tends to increase the length of the title.

Sometimes dates are included in a short title.

National Housing Act, 1954

War Veterans Allowance Act, 1952.

The purpose is to tell the reader the year it was passed so that he can readily find the statute. However, assistance of this nature is hardly required in statutes of the Canadian Parliament. The public general statutes are periodically revised, consolidated and officially republished, and the index to subsequent sessional volumes includes a reference to every statute in the latest Revised Statutes and every statute enacted thereafter. Given the name of the

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statute (without the date of enactment) the sessional year and chapter can be found in a few seconds.

Dates are occasionally included in a revision Act so as to distinguish it from its immediate predecessor, but the date is dropped in the next official consolidation of the statutes.

In a federal state the name of the jurisdiction is sometimes included in the title, the purpose being to distinguish it from another Act of the same name. Thus, there are in force federal and provincial evidence Acts. The evidence Act enacted by Parliament is called *Canada Evidence Act*, and that enacted by Saskatchewan is called the *Saskatchewan Evidence Act*. This distinction, however, is not made in all provinces, nor is it made in all cases. There are federal and provincial interpretation Acts, but the title of the Canadian Act is simply *Interpretation Act*. The tendency now is against including the name of the jurisdiction.

3. Enacting Formula

Every statute has an enacting formula.

Section 4 of the *Interpretation Act* provides as follows:

4. (1) The enacting clause of an Act may be in the following form:—
“Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:”.

(2) The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form.

In the ordinary statute the enacting clause is as set out in section 4 of the *Interpretation Act*. Where there is a preamble, the preamble is followed by “Now therefore, Her Majesty” etc., in the form given in the *Interpretation Act*.

Whereas it is desirable to establish a central bank in Canada to regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of production, trade, prices and employment, so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of the Dominion; Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:—

Section 4 of the *Interpretation Act* is permissive, and a different form is used in appropriation Acts. The formula there takes the form of an address to the Sovereign and a petition.

MOST GRACIOUS SOVEREIGN,

WHEREAS it appears by messages from His Excellency, the Right Honourable Vincent Massey, etc., etc., Governor General of Canada, and the

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estimates accompanying the said messages, that the sums hereinafter mentioned are required to defray certain expenses of the public service of Canada, not otherwise provided for, for the financial year ending the thirty-first day of March, one thousand nine hundred and fifty-three, and for other purposes connected with the public service: May it therefore please your Majesty, that it may be enacted, and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, that:

Provincial appropriation Acts are in the same form. This form was copied from the United Kingdom form, which reads as follows:

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sums hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The ordinary form in the United Kingdom is

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Taxation measures in the United Kingdom also have enacting clauses in the form of an address.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supply to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Both the appropriation Acts and the taxation Acts arise out of a message from the Sovereign. The Sovereign makes known the financial needs and two committees of the House of Commons are established, namely, the Committee of Supply, which considers what grants are to be made, and the Committee of Ways and Means, which considers how the money is to be provided. The conclusions of the Committee of Supply and the resolutions of the Committee of Ways and Means lead to the appropriation and taxation bills.

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Financial statutes, therefore, are a direct response to a message from the Sovereign, and this probably accounts for the difference in language.

The form of the preamble to appropriation and finance Acts in England is in the nature of a direct address to the Sovereign and takes the form of an address. There is a salutation *Most gracious Sovereign* and the words commonly used in an address appear, namely, *do therefore most humbly beseech Your Majesty*.

But in Canada there is no special form in taxation measures. The form is simply

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows.

At one time there was a special preamble in Canadian taxation bills. It was used, for example, in c.11 of 37 Geo. III (1797); c. 19 of 4 Geo. IV (1824) and cc.12 and 14 of 4 & 5 Vict. The form seems to have vanished in 7 Victoria.

The need for a special form of enacting clause in an appropriation Act in Canada is not apparent.

If the special form of preamble is used, should it not stress or emphasize the position of the Commons in relation to financial bills, as is the case in the United Kingdom?

In the United Kingdom the passive form *be it enacted* is used in all bills. In Canada, the active form *Her Majesty . . . enacts* is used. There is no apparent reason why in Canada there is a switch from the active form in ordinary Acts to the passive form in appropriation Acts.

In all United Kingdom Acts, the enacting formula states that it is enacted by the *Queen's Most Excellent Majesty*. This expression is not used in the active form in Canada, so there appears to be no good reason why we should use the words *Most Excellent* in appropriation Acts. There is also no apparent reason why there should be a special preamble in the form of an address when a formal communication between Parliament and the Sovereign (or Her representative) is provided for in the words used by the Speaker of the House of Commons in presenting the appropriation bill for Royal Assent.

Private Acts are founded on petitions, and the petition is always cited.

WHEREAS The London and Port Stanley Railway Company and the Corporation of the City of London have prayed that it be enacted as hereinafter set forth and it is expedient to grant the prayer of the petition: Therefore Her Majesty, by and with the advice and consent of the Senate and the House of Commons of Canada, enacts as follows:

WHEREAS the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

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The use of preambles has fallen out of fashion, and public Acts do not now normally have preambles.

The preamble is part of the Act and may be referred to in construing the Act. The *Interpretation Act* provides:

The preamble of every Act shall be deemed a part thereof, intended to assist in explaining the purport and object of the Act.

4. Marginal Notes

It is customary in most jurisdictions to set out in the margins of each section in an Act a short note indicating the subject-matter of the section. The purpose is to show the general framework of the Act and to assist the reader in finding the particular provisions in which he is interested. Marginal notes do not form part of the statute, but they can be useful in that they may serve to put the reader on the right track, as it were, and assist him in grasping the content and framework of the statute.

A marginal note should not be a summary of the section; it should simply point to the subject-matter thereof. For example, the marginal note to a section authorizing a Minister to make regulations should be *Regulations* rather than *Minister may make regulations*. As a rule, marginal notes are titles rather than sentences. A series of marginal notes should resemble an index, similar to the table of contents of a textbook. The following are some examples:

Short title	1. This Act may be cited as the <i>Foreign Aircraft Third Party Damage Act</i> .
Definitions	2. In this Act,
"Contracting state"	"Contracting State" means any State that has ratified or adhered to the Convention and whose denunciation thereof has not become effective;
"Convention"	"Convention" means the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface, set out in the Schedule; and other words and expressions have the same meaning as in the Convention.
Convention approved	3. (1) The Convention is hereby approved and declared to have the force of law in Canada.
Application	(2) This Act and the Convention apply only in respect of damage contemplated by Article 1 of the Convention caused in the territory of Canada by an aircraft registered in the territory of a Contracting State other than Canada.
Regulations	4. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and the Convention.

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Coming
into
force

5. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council, and shall continue in force until a day to be fixed by proclamation of the Governor in Council following termination of the Convention or denunciation thereof by Canada, and no longer.

In some jurisdictions a section consisting of a number of subsections has only one marginal note, which is placed opposite the first subsection. In Canadian statutes it is customary to have a marginal note for each subsection.

For example

Offices

10. (1) The Commission shall establish offices at such places as it considers desirable for the purposes of this Act.

Regional
Divisions

(2) The Commission may establish such regional divisions as it considers desirable, and may establish a regional office within a regional division.

Control of offices

(3) An office provided for under subsection (2) within a regional division may be directed and controlled by the Commission through the regional office within that division.

On the other hand, where a section or subsection is divided into paragraphs, marginal notes are not usually placed opposite each paragraph. One reason is that in many cases a paragraph is too small a fragment of the sentence to have a distinct subject-matter.

Where the paragraphs constitute an enumeration of distinct subjects, separate marginal notes are sometimes, though not usually, included.

A definition section should have a marginal note for each word defined.

For example

Definitions

2. In this Act

"Advisory
Committee"

"Advisory Committee" means the Unemployment Insurance Advisory Committee established by this Act;

"Commission"

"Commission" means the Unemployment Insurance Commission established by this Act;

"contribution
week"

"contribution week" means a week for which contributions in respect of the earnings of an insured person during that week are payable and have been paid;

"employer"

"employer" includes a person who has been an employer;

"excepted
employment"

"excepted employment" means employment specified in section 27;

"Fund"

"Fund" means the Unemployment Insurance Fund established by this Act;

"inspector"

"inspector" means a person authorized to act as an inspector under this Act;

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"insurable employment"	"insurable employment" means employment specified in section 25;
"insured person"	"insured person" means a person who is or has been employed in insurable employment;
"labour dispute"	"labour dispute" means any dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons;
"Minister"	"Minister" means the Minister of Labour;
"umpire"	"umpire" includes a deputy umpire;
"week"	"week" means a period of seven consecutive days commencing on and including Sunday.

Prior to the issue of the Revised Statutes of Canada, 1970, each definition was labelled with a letter, but this practice has been discontinued in order that definitions can be listed in strict alphabetical order in both the English and French versions of the statutes.

5. Headings

Headings and sub-headings interspersed throughout an Act greatly assist the reader. Moreover, generous use of headings leads to an improvement in arrangement. The *Unemployment Insurance Act*, 1955, c. 50, has five Part headings, thirty main headings and forty-two sub-headings.

Headings are regarded as part of the Act. They should, therefore, be carefully prepared by the draftsmen and their language should be consistent with the language of the Act.

Part headings are usually in large capitals; ordinary headings in small capitals; and sub-headings in italics. In the italicized sub-headings, each word in the heading begins with a capital.

Headings should be grammatically independent of the text of the Act; the text of the statute should be complete without reference to the headings.

6. Divisions

Prior to 1850 statutes were enacted in England without division into sections, and each enactment in the statute was introduced by an enacting formula. Statutes were, however, divided into sections when printed, but the division into sections had no parliamentary sanction.

Bentham urged that statutes be divided into numbered sections and short sentences, and it was ultimately enacted in England by 13 & 14 Victoria, c. 21 that all Acts be divided into sections if there be more enactments than one, and that the sections should be deemed to be substantive enactments without any introductory words. Since that time, English statutes have been divided into sections, numbered consecutively from the beginning of

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the statute to the end. The section number is printed in bold face type. The statutes in Canada are in the same form.

Sections are usually punctuated as one sentence only.¹ It would be too restrictive to say that a section should never have more than one sentence, since two or more grammatical sentences are frequently combined and punctuated as a single sentence. However, the advantages of dividing an Act into numbered enactments are lost if the sections consist of a number of unconnected sentences.

Sections are commonly divided into subsections that are designated by numerals in parentheses. Closely related enactments may thus be conveniently combined in a single section; related provisions are therefore easier to find. But if the subsections are long or numerous, they become less prominent and it would be better to have separate sections. A reasonably good rule of thumb is that there should be no printed page that does not have at least one section number in bold face type.

Except for the way they are numbered, sections and subsections are identical divisions. Each is a complete sentence, and each is regarded as a distinct enactment.

Sections and subsections are further divided, but under modern Canadian practice these further divisions are not separate enactments.

For example

Export and
interprovincial
movement of meat
products.

10. (1) No person shall export out of Canada, or send or convey from one province to another, any meat product unless

- (a) the meat product was prepared in an establishment that
 - (i) complied with prescribed conditions, and
 - (ii) was registered and operated in prescribed manner;
- (b) the animal from which the product was derived
 - (i) was slaughtered in prescribed manner, and
 - (ii) was inspected as prescribed before and after slaughter;
- (c) the meat product is packaged and marked as prescribed; and
- (d) the meat product conforms to prescribed standards.

Imports.

(2) No person shall import into Canada any meat product unless

- (a) the meat product is packaged and marked as prescribed,

¹ See Book One, Ch.VIII.

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- (b) the importer has obtained and produces prescribed evidence that the meat product conforms to prescribed standards, and
- (c) meat products of the class or kind imported are, under the laws of the country of origin subject to inspection in prescribed manner.

The same section could be written without the subdivisions.

Export and
interprovincial
movement of meat
products.

10. (1) No person shall export out of Canada, or send or convey from one province to another, any meat product unless the meat product was prepared in an establishment that complied with prescribed conditions and was registered and operated in prescribed manner, the animal from which the product was derived was slaughtered in prescribed manner and was inspected as prescribed before and after slaughter, the meat product is packaged and marked as prescribed and the meat product conforms to prescribed standards.

Imports.

(2) No person shall import into Canada any meat product unless the meat product is packaged and marked as prescribed, the importer has obtained and produces prescribed evidence that the meat product conforms to prescribed standards, and meat products of the class or kind imported are, under the laws of the country of origin, subject to inspection in prescribed manner.

The subdivisions are made to facilitate reading, and, in many cases, to remove doubt or ambiguity.

The first series of these subdivisions is designated by lower case letters of the alphabet in parentheses, and the second series by small roman numerals in parentheses; the former are designated as *paragraphs* and the latter as *subparagraphs*.

Sometimes a third series, designated by capital letters in parentheses and called *clauses*, is introduced, particularly in taxation statutes where the utmost precision is imperative. For example

10. (1) For the purpose of computing the taxable income of an individual for a taxation year, there may be deducted from his income for the year such of the following amounts as are applicable:

- (a) \$2,000 in the case of a taxpayer who, during the year, was
 - (i) a married person who supported his spouse,
 - (ii) a person who had a child wholly dependent upon him for support, if the child was, during the year,
 - (A) under 21 years of age, or

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- (B) 21 years of age or over and dependent by reason of mental or physical infirmity, or
- (C) 21 years of age or over and in full-time attendance at a school or university,
- (iii) an unmarried person or a married person not supporting his spouse who maintained a self-contained domestic establishment and actually supported therein a person wholly dependent upon him and connected with him by blood relationship, marriage or adoption, or
- (iv) an unmarried minister or clergyman in charge of a diocese, parish or congregation who maintained a self-contained domestic establishment and employed therein a full-time servant;

A fourth series, designated by capital roman numerals in parentheses and called *subclauses*, could also be introduced.

Sections and subsections are each capable of subdivision into paragraphs, subparagraphs, etc.

Sections and subsections both run to the same left-hand margin, but each series of further subdivisions is placed a short space to the right.

In Canadian legislation there must always be introductory words preceding paragraphs, subparagraphs or some further subdivision. The following form is accordingly regarded as improper.

10. (a) Every person who, being president, vice-president, director, general manager, manager, clerk, other officer or servant of the bank, pledges, assigns, or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank, and
- (b) every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation,

is guilty of an offence and liable to a fine of not less than four hundred dollars and not more than two thousand dollars or to imprisonment for a term not exceeding two years or to both.

The foregoing should be written

10. Every person who

- (a) being president, vice-president, director, general manager, manager, clerk, other officer or servant of the bank, pledges, assigns or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank, or
- (b) accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation,

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is guilty of an offence and liable to a fine of not less than four hundred dollars and not more than two thousand dollars or to imprisonment for a term not exceeding two years or to both.

The following subsection division is also incorrect.

(6) (a) When the Minister has knowledge or suspects that any person is or is about to become indebted to a licensee he may, by registered letter, demand of such person that the moneys otherwise payable to the licensee be in whole or in part paid over to the Receiver General of Canada on account of said licensee's liability under the provisions of this Act.

(b) The receipt of the Minister therefor shall constitute a good and sufficient discharge of the liability of such person to said licensee to the extent of the amount referred to in the receipt.

(c) Any person discharging any liability to a licensee after receipt of the registered letter referred to shall be personally liable to the Receiver General of Canada to the extent of the liability discharged as between him and the licensee or to the extent of the liability of the licensee for taxes and penalties, whichever is the lesser amount.

The foregoing should be written as three subsections, (6), (7) and (8). Lettered paragraphs (a), (b) and (c) should not be divided into subparagraphs (i), (ii) unless there are introductory words.

In all cases, there may or may not be concluding words, taken out to the next nearest left-hand margin.

Difficulties arise where there are two or more subdivisions in the same series.

10. (1) Every one who

(a) gives, offers or agrees to give or offer to a municipal official, or

(b) being a municipal official, demands, accepts or offers or agrees to accept from any person,

a loan, reward, advantage or benefit of any kind as consideration for the official

(c) to abstain from voting at a meeting of the municipal council or a committee thereof,

(d) to vote in favour of or against a measure, motion or resolution,

(e) to aid in procuring or preventing the adoption of a measure, motion or resolution, or

(f) to perform or fail to perform an official act,

is guilty of an indictable offence and is liable to imprisonment for two years.

If the second series is lettered (a) to (d), then there would be two paragraphs (a) and two paragraphs (b) in the one subsection, which obviously

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could not be permitted; a reference in another statute or in a charge to *paragraph (a)* for example would be ambiguous.

If the second series is designated (i), (ii), (iii), (iv), the printers, by force of habit, would carry the margin to the right of the margin of (a) and (b). The further indentation would lead to the belief that the second series is subordinate to the first. The two series are equal in value.

A continuation of the lettering as in the example quoted would seem to be the best solution.

Further difficulties arise where, in addition, there are no introductory words preceding the subdivisions, or where incorrect designations are employed. The following was an actual enactment.

10. (a) If any suspension of payment in full, in specie or Dominion or Bank of Canada notes, of all or any of the notes or other liabilities of the bank continues for three months after the expiration of the time which, under the provisions of this Act, would constitute the bank insolvent; and
- (b) if no proceedings are taken under any Act for the winding up of the bank; and
- (c) if any director of the bank refuses to make or enforce, or to concur in the making or enforcing of any call on the shareholders of the bank, to any amount which the directors deem necessary to pay all the debts and liabilities of the bank,

such director shall be guilty of an indictable offence, and liable

- (a) to imprisonment for a term not exceeding two years; and
- (b) personally for any damages suffered by any such default.

Acts may also be divided into Parts. Lord Thring advised that as a general rule the division into Parts should only be used where the subject-matter of the Act involves different heads of law, each of which might without impropriety form the subject-matter of a separate Act, or contain classes of enactments, such as transitional provisions, distinct in their character from the rest of the Act. That may have been the practice in Thring's time, but it certainly is not now, at least in Canadian legislation. The original *Unemployment Insurance Act* consisted of 5 Parts as follows:

- Part I — Organization (of Unemployment Insurance Commission)
- Part II — Employment Service
- Part III — Unemployment Insurance
- Part IV — General
- Part V — Transitional and Repeal

Part II could have been the subject-matter of a separate Act, and Part V included transitional provisions of the kind Thring had in mind. But not one of the remaining Parts could have formed the subject-matter of a separate Act.

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The *National Defence Act*, the *National Housing Act*, and many others are divided into Parts, and all are the better for it, notwithstanding that the various Parts could not form separate Acts.

If the division of an Act into Parts will make it more readable, will enable the scheme of the Act to be more readily comprehended, or will facilitate the drafting or the passage of the measure, then it is not only proper but desirable so to divide it.

Parts are normally designated *Part I*, *Part II*, etc., and usually have a title, printed in large capitals. The Part numbers do not in any way affect the numbering of the sections.

Acts may also include Schedules, and, although they are therefore “part” of the Act, they are not necessarily enactments. For example, the *Admiralty Act* of 1934 conferred upon the Exchequer Court of Canada the same jurisdiction in admiralty as that possessed by the High Court of Justice in England, and for convenience of reference set out in a Schedule the relevant provisions of the United Kingdom *Judicature Act*. International Treaties, Conventions, etc., are usually set out in the Schedules to Acts ratifying or implementing them; but the law would be complete without the Schedules, and the treaties, etc., are not enactments of the implementing or ratifying legislature.

Forms, enumerations, tables of repealed provisions, etc., may be conveniently set out in a Schedule and thus make the Act more readable. Schedules, however, do not, as a rule, contain the text of new laws or alterations in the law, unless there is at least an indication in the body of the Act that they do so. Substantive provisions of law, in fairness to parliamentarians and members of the public, should not be concealed or buried in a Schedule.

Schedules may be lettered or numbered. Thus, they may be designated *Schedule I*, *Schedule II*, etc., *Schedule A*, *Schedule B*, etc.; or *The First Schedule*, the *Second Schedule*, etc. There should of course, be uniformity.

Schedules may be divided into sections, or even Parts. Rather than employ a new division system, or new names for divisions, it is generally advisable to follow the system and names prevailing in the particular jurisdiction for statutes, if that is possible.

7. Numbers and Dates

Numbers and dates may be expressed in numerals or in words. A reference to another section could be written *section 36* or *section thirty-six*; and a date could be *March 3, 1956*, *March the third, nineteen hundred* (or, *one thousand nine hundred*) *and fifty-six*, or the *third day of March, one thousand*, etc.

Numerals are more prominent, but words are less likely to lead to error. At one time all numbers in the statutes of Canada were written out in words, but the current practice is to use numerals for section and subsection refer-

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ences, days of the month and years. Other numbers, as for example, amounts of money, are usually expressed in words, except in some taxation Acts. A section containing two or more numbers, dates, etc., is certainly more presentable if numerals are used. And the use of numerals makes checking easier during the drafting stages.

A reference to subsections and paragraphs in Canadian legislation includes the parentheses. Thus, subsection (3), paragraph (a), etc. In some jurisdictions the practice is to omit the parentheses.

8. Symbols and abbreviations

Symbols (\$, ¢, %, etc.) and abbreviations (p.c., f.i.f.a., Feb., sec., chap., cap., subsec., e.g.) are not favoured in legislation, although the dollar and percentage signs are used in taxation statutes, particularly in setting out rates of income tax. In the ordinary case it is best to avoid symbols and abbreviations; they may be susceptible of several interpretations, and they could be ruined in the typesetting and escape undetected.

9. Citation of Acts

An Act may be cited by its long title or short title, either with or without reference to the chapter or the year in which it was passed; and it may be cited by chapter number of the Revised Statutes or of the year in which it was passed. Any citation that identifies the statute is a legally sufficient citation. In Canadian statutes the reference is written in italics.

The following are examples of the various ways in which an Act may be cited:

An Act respecting banks and banking (Long Title)

Bank Act (Short Title)

1953-54, chapter 48

Chapter 48 of the Statutes of 1953-54

2-3 Elizabeth II, chapter 48.

Each of the first two examples may be followed by any of the last three.

Acts are usually cited by short title only.

At one time the chapter number and year of enactment (or year of the Revised Statutes) of an Act referred to in a section of another Act were set out, in abbreviated form, in the marginal notes. This practice was discontinued because it became misleading. The Act referred to might be later re-enacted, but the reference in the marginal notes would be to the prior Act. A reader might be thrown off guard and neglect to search for amendments to the Act referred to.

Moreover, over a period of time, many such marginal citations would become obsolete and useless.

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Under the provisions of the *Interpretation Act*, a citation of or reference to an Act, unless the contrary intention appears, is deemed to be a citation of or reference to the Act as amended. It is therefore unnecessary to include a reference to subsequent amending Acts, or to add the words *as amended* or other general words of like character.

A reference in an amending Act to the principal Act does not, therefore, include a reference to any previous amendments to the same Act. The citation of the principal Act and all its previous amendments is, however, set out in a marginal note opposite the enacting clause; and, in addition, if a particular provision is being amended a second or subsequent time, the marginal note to the amending enactment includes a reference to the previous amendments. Members of Parliament and the public can thus readily find the relevant statutes and can, if they take the trouble to do so, read the amendment in its correct context.

At one time the references to previous amendments were included in the text of the amending statute, but the practice was discontinued. The reference tended to clutter up the statute and, if a mistake were made, it would be a mistake in law with possibly serious consequences. Transfer of the citations to the margin clears the statute of unnecessary material and, if a mistake is made, no harm is done because marginal notes do not form part of the Act.

An Act to amend the Excise Tax Act

R.S. cc.100, 320;
1952-53, c.35; 1953-
54, c.56

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1953-54, c.56, s.14

1. Section 1 of Schedule I to the *Excise Tax Act* is repealed and the following substituted therefor:

The reader knows at once that the principal Act is chapter 100 of the Revised Statutes of Canada, 1952, and that it has been amended by chapter 320 of the Revised Statutes and also by chapter 35 of the statutes of 1952-53 and chapter 56 of the statutes of 1953-54. If he takes these volumes off the shelf, and puts a marker at the proper chapter, he has the whole law before him and is equipped to read the amendment.

The reference in the margin opposite section 1 indicates that section 1 of Schedule I was re-enacted in the 1953-54 session and appears in section 14 of chapter 56 of the statutes for that year. If there is no marginal note opposite a section of the amending statute, the reader knows that he can find the section being amended in the given chapter of the Revised Statutes.

Sections, subsections and other divisions are cited by their letter or number, followed by a reference to the Act in which they appear.

By virtue of the *Interpretation Act*, however, a reference to a section, without anything more, is construed as a reference to a section of the Act in which the reference is made. Consequently, it is unnecessary to add the words

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of this Act. A similar rule obtains as regards Schedules, Forms, subsections, etc. Thus a reference in the *Canada Elections Act* to *section 12* or to *Schedule I* is construed as a reference to section 12 or Schedule I of that Act. A reference to *subsection (2)* is construed as subsection (2) of the section in which the reference is made.

There are different modes of citing other divisions. Thus, a subparagraph may be cited:

subparagraph (ii) of paragraph (b) of subsection (3) of section 12
subparagraph 12(3) (b) (ii).

The first was used in the statutes of Canada prior to the Revised Statutes of 1970. There, and in subsequent enactments, the second form is now used.

The *Interpretation Act* provides that a reference to two or more divisions includes the first and the last mentioned. Thus section 8 to 12 includes both 8 and 12.

10. Amending Formulae

While an infinite variety of forms can be used to enact and amend laws, it is well to adhere to a more or less uniform system. The forms set out below are the most common and are recommended for statutes and regulations.

In an amending statute the present practice is to name in the first section the statute being amended, and thereafter to refer to the statute as *the said Act*.

(a) *Repeal*

Section 3 of the said Act is repealed. (not “The said Act is amended by repealing section 3 thereof.”)

Subparagraph 3(1) (b) (i) of the said Act is repealed.

(b) *Repeal and re-enactment*

Section 4 of the said Act is repealed and the following substituted therefor:

“4.....”

(c) *Inserting new section or subsection*

The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section:

“4.1.....”

Section 6 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

“2.1”

(d) *Renumbering*

Renumbering should be avoided because of the confusion that is likely

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to arise. It is better to insert a lettered section or a decimal number.

When renumbering is necessary, the following forms are used:

Section 6 of the said Act is renumbered as section 7.

Subsection 4(3) of the said Act is renumbered as subsection (4).

(e) *Re-enactment of general words preceding or following lettered paragraphs*

All that portion of section 3 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

(f) *Striking out words and substituting others*

This method of amendment is rarely used in the statutes of Canada; the established practice is, ordinarily, to make amendments by re-enactment. It is occasionally used in regulations. When used, the following forms are suitable:

Section 5 of the said Act is amended by striking out the expression...and substituting therefor the expression...

Section 5 of the said Act is amended by striking out the word...where it first occurs therein and substituting therefor the word...

Sections 4, 6 and 10 of the said Act are amended by striking out the expression...wherever it occurs therein and substituting therefor in each case the expression...

Sections 7 and 9 of the said Act are amended by striking out the expressions ...and...wherever they occur therein and substituting therefor in each case the expressions...respectively.

(g) *Headings*

The heading...(quote)...immediately following (preceding) section 10 of the said Act is repealed (and the following substituted therefor:).

(h) *Long Title*

1. The long title of the *Prime Minister's Residence Act*, chapter P-20 of the Revised Statutes of Canada, 1970, is repealed and the following substituted therefor:

"An Act to provide for the operation and maintenance of official residences"

One reference to two or more provisions should include only contiguous provisions. Thus, a provision should not be

Sections 8 and 10 are repealed and the following substituted therefor,

But it would be correct to provide that

Sections 8 to 10 are repealed and the following substituted therefor.

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11. Explanatory Notes

It is customary to include in or annex to a bill, for the information of members of Parliament, a short statement explaining its purport. The text of the bill is printed on the left-hand pages, and the explanatory material on the right.

In an amending bill the proposed changes are indicated by underlining or side-lining; and on the right-hand side the existing text of the section is printed with the portions to be changed printed in italics. There is also a short statement of the reasons for the proposed change.

In a consolidation or revision bill, there is a short statement indicating the principal changes, and opposite each clause of the bill there is a reference to the corresponding provision of the existing law.

In a new bill, there is again a short statement outlining the principal features of the measure, but no further explanations are given with respect to the individual clauses.

Explanatory notes should be concise and to the point, and should be free of contentious matter. They should do no more than state the facts, leaving it to the ministry to justify the measure politically.

12. Coming into force

At common law a statute was deemed to have come into force on the first day of the session in which it was enacted, unless it contained an express provision to the contrary. This obviously inconvenient and, indeed, unjust rule was abolished in England in 1793 by c.13 of 33 Geo. 3., which provided that an Act should come into force on the day it received royal assent. This rule is also embodied in the *Interpretation Act* of Canada. It is therefore not necessary to specify a commencement date unless some date other than the date of royal assent is to be the commencement date of the Act or any provisions thereof.

The following are some examples of the different situations that arise:

(a) *Fixed Day*

(i) Ascertained

This Act shall come into force on the 30th day of September, 1956.

(ii) Unascertained

This Act shall come into force on the date of the opening of the session of Parliament next ensuing after the date of the Royal Assent thereto.

In the foregoing example the date is settled by reference to an event, but the date of the event is uncertain. It is desirable to select an event that is ascertainable from the statute book itself, or at least from official records that are known and available to the public. In the annual volumes of statutes, the commencement and closing dates of the sessions are disclosed.

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One minor point is whether the word should be *date* or *day*. Perhaps it does not matter, but the tendency now is to say *day*. A *date* is not necessarily a *day*.

(b) *Day to be fixed*

Frequently Acts are expressed to come into force on a day to be fixed, usually by proclamation under the Great Seal. The authority to issue the proclamation may be unconditional or conditional.

(i) Unconditional

This Act shall come into force on a day to be fixed by proclamation

(ii) Conditional

This Act shall come into force on a day to be fixed by proclamation published in the *Canada Gazette*, but such proclamation shall not be made until the Legislation of Quebec agrees to the said repeal of paragraphs 2 (a) and (b) of the said Act.

(iii) Alternative

This Act shall come into force on the 1st day of January, 1947, or such earlier date as may be fixed by proclamation, and shall continue in force and have effect until sixty days after the commencement of the first session of Parliament commencing in the year 1949.

The event selected for the fixing of the commencement date should be an official act, readily ascertainable. Proclamations issued under the Great Seal are published in the *Canada Gazette*, and a notice thereof is published in the preface to the annual sessional volumes of statutes.

Occasionally some other event is selected if the statute affects but a limited number of people who will know whether or not the event has taken place.

This Act shall come into force when a vacancy in the office of either the General Librarian or Parliamentary Librarian under the *Library of Parliament Act* first occurs after the passing of this Act, and the General Librarian or Parliamentary Librarian, as the case may be, then in office, shall be deemed to have been appointed Parliamentary Librarian under the *Library of Parliament Act* as amended by this Act.

(c) *Portions of Acts*

Sometimes different portions of the Act are to come into force at different times.

This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

This Act or any Part thereof shall come into force on a day or days to be fixed by proclamation.

Each section of this Act shall come into force on a day to be fixed by proclamation.

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This Act or any portion thereof shall come into force on a day or days to be fixed by proclamation.

Sometimes certain provisions are to come into force on royal assent and others at a future time. The reference to the royal assent date in the following examples is perhaps not necessary, but it does clarify the more complicated provisions.

Sections 3, 4, 5, 14, 15 and 17 shall come into force on a day or days to be fixed by proclamation and all other sections of this Act shall come into force on the day this Act is assented to.

Subsections 1(1), (2), (5), (8), (14) and (15), sections 2 to 13, subsection 14 (1), sections 15, 17 to 22, section 27, subsections 35(1) and (2), sections 50, 51, 59, 60 and 62 shall come into force on the day this Act is assented to, and the remaining provisions of this Act shall come into force on a day or days to be fixed by proclamation.

Sections 2 and 7 of this Act shall come into force on the day this Act is assented to and the remaining sections of this Act shall come into force on the 1st day of August, 1950.

Sections 3, 6 and 8 shall be deemed to have come into force on the 1st day of October, 1946, and the other sections of this Act shall come into force on a day to be fixed by proclamation.

This Act shall take effect only upon the dissolution of the present Parliament, except that for the purpose only of authorizing and enabling the appointment, pursuant to section 8 of the *Canada Elections Act*, of returning officers, whenever required, this Act shall be deemed to have come into force on the date upon which it was assented to.

Section 38 of this Act shall come into force on the day this Act is assented to and all other sections of this Act shall come into force on the 1st day of January, 1947.

(d) *Retroactive commencement*

This Act shall be deemed to have come into force on the 1st day of April, 1956.

10. (1) Sections 2 and 4 of this Act and Schedules A and C to this Act shall be deemed to have come into force on the 6th day of April, 1955, and to have applied to all goods mentioned therein imported or taken out of warehouse for consumption on or after that day and to have applied to goods previously imported for which no entry for consumption was made before that day.

(2) Sections 1 and 3 of this Act and Schedule B to this Act shall be deemed to have come into force on the 3rd day of June, 1955, and to have applied to all goods mentioned therein imported or taken out of warehouse for consumption on or after that day and to have applied to goods previously imported for which no entry for consumption was made before that day.

(3) Section 5 of this Act and Schedule D to this Act shall be deemed to have come into force on the 7th day of April, 1954.

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Section 5 of this Act shall be deemed to have come into force on the 1st day of January, 1954, and the remaining sections of this Act shall be deemed to have come into force on the 1st day of April, 1954.

This Act shall be deemed to have come into force on the first day of the month in which it is assented to.

This Act shall not take effect until a proclamation is issued and as and from the date of such proclamation shall be deemed to have come into force on the first day of May, 1947.

(e) Prospective and Retroactive

10. (1) Sections 1, 2 and 4 of this Act shall be deemed to have come into force on the 21st day of March, 1956, and to have applied to all goods mentioned therein imported or taken out of warehouse for consumption on or after that day, and to have applied to goods previously imported for which no entry for consumption was made before that day.

(2) Section 3 of this Act shall come into force six months after the day on which this Act is assented to.

10. (1) Section 1 of this Act shall be deemed to have come into force on the 1st day of April, 1950.

(2) Sections 4, 7 and 8 of this Act shall be deemed to have come into force on the 29th day of March, 1950.

(3) Section 6 of this Act shall come into force on the 1st day of July, 1950.

Sections 1, 211, 248, 249 and 250 of this Act shall come into force on the day this Act is assented to, section 211 shall operate retrospectively to the 8th day of December, 1947, section 249 shall operate retrospectively to the 1st day of October, 1946, and the other sections of this Act shall come into force on a day or days to be fixed by proclamation.

This Act shall come into force on the 1st day of October, 1948, except section 31 which shall be deemed to have come into force on the 19th day of May, 1948.

13. Duration

A statute endures forever, unless it is repealed or is expressed to expire. There are occasions when Acts are not intended to be perpetual and, accordingly, they include expiry provisions.

The date of expiry may be provided for in the same way as the date of commencement. It may be a fixed date, either ascertained or unascertained; it may be left to be fixed by some subsequent event. The expiration may be conditional or unconditional; and it may apply to whole Acts or only to portions of Acts.

The following are some examples.

(a) Fixed day

(i) Ascertained

This Part shall continue in force for a period of three years from the day on which it came into force, and no longer.

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The provisions of this Part shall be deemed to be repealed on and after the 1st day of August, 1957.

This Act, except subsection 4(6), shall expire on the 31st day of July, 1956.

This section shall expire on such day as the Governor in Council may fix by proclamation.

(ii) Unascertained

This Act shall expire on the last day of the first session of Parliament in 1953.

This Act shall continue in force and have effect until sixty days after the commencement of the first session of Parliament commencing in the year 1953.

This Act shall continue in force until a day to be fixed by proclamation following upon the termination of the Agreement, and no longer.

This Act shall expire sixty days after the commencement of the first session of Parliament commencing in the year 1949.

(b) *Day to be fixed*

This Act shall expire on a day to be fixed by proclamation.

This Act shall continue in force until a day fixed by proclamation following termination of the Convention in accordance with the provisions thereof, and no longer.

This Act shall continue in force until a day to be fixed by proclamation following upon the termination of the Agreement, and no longer.

This Act shall continue in force until a day fixed by proclamation and from and after that date shall be deemed to be repealed.

Section 9 of this Act shall come into force on a day to be fixed, and remain in force for such period as may be determined, by proclamation.

Each Part of this Act shall come into force upon a day to be fixed by proclamation of the Governor in Council and the Governor in Council may fix and determine a day on and after which or a period during which no loans under any Part or Parts of this Act or no loans in excess of a stipulated maximum amount may be made.

(c) *Conditional*

Sections 23 to 31 shall expire on the 31st day of July, 1959, unless Parliament is in session on that day, in which case those sections shall expire on the day such session ends or is adjourned *sine die* or to a day being more than thirty days from the date of adjournment.

10. (1) Subject to subsection (2), this Act shall expire on the 31st day of December, 1947, if Parliament meets during November or December, 1947, but if Parliament does not so meet it shall expire on the sixtieth day after Parliament first meets during the year 1948 or on the 31st day of March, 1948, whichever date is the earlier.

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(2) If at any time while this Act is in force, addresses are presented to the Governor General by the Senate and House of Commons, respectively, praying that this Act should be continued in force for a further period, not in any case exceeding one year, from the time at which it would otherwise expire and the Governor in Council so orders, this Act shall continue in force for that further period.

(d) Commencement and Expiration Combined

This Act shall come into force on the 1st day of January, 1947, or such earlier day as may be fixed by proclamation, and shall continue in force and have effect until sixty days after the commencement of the first session of Parliament commencing in the year 1949.

This Act shall come into force on a day to be fixed by proclamation of the Governor in Council, and shall continue in force until a day to be fixed by proclamation of the Governor in Council following the termination of the Agreement, and no longer.

This Act shall be deemed to have come into force on the 18th day of February, 1952, and shall be repealed on a day to be fixed by proclamation.

10. (1) This Act shall be deemed to have come into force on the 5th day of July, 1950.

(2) Section 7 of this Act shall expire on the last day of the first session of Parliament in 1953.

This Act shall come into force on a day to be fixed by proclamation, and shall continue in force until a day to be fixed by further proclamation and no longer.

This Act shall come into force upon the expiration of the *National Emergency Transitional Powers Act, 1945*, and shall expire sixty days from the commencement of the first session of Parliament commencing in the year 1948.

14. Application

The scope of a statute, or some provisions in it, may be restricted or clarified by an application section. The following are some examples:

10. (1) The Convention is hereby approved and declared to have the force of law in Canada.

(2) This Act and the Convention apply only in respect of damage contemplated by Article I of the Convention caused in the territory of Canada by an aircraft registered in the territory of a Contracting State other than Canada.

This Act does not apply in respect of an international river improvement

(a) constructed under the authority of an Act of the Parliament of Canada,

(b) situated within boundary waters as defined in the Treaty relating to boundary waters and questions arising between Canada and the United States signed at Washington on the 11th day of January, 1909, or

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- (c) constructed, operated or maintained solely for domestic, sanitary or irrigation purposes or other similar consumptive uses.

This Act applies to and in respect of property under the administration or control of a department.

This Act applies to

- (a) The Montreal City and District Savings Bank, and
- (b) La Banque d'Economie de Quebec, The Quebec Savings Bank.

This Act applies to

- (a) each bank enumerated in Schedule A,
- (b) an amalgamated bank as specified in subsection (5) of section 100,

and does not apply to any other bank.

10. (1) This Act does not apply to the race of aborigines commonly referred to as Eskimos.

(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 37 to 41, shall not apply to

- (a) any Indians or any group or band of Indians, or
- (b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

10. (1) Subject to subsection (3), this Act applies in respect of the following countries:

- (a) Australia, Ceylon, India, New Zealand, Pakistan, the Union of South Africa and the United Kingdom; and
- (b) any country designated under subsection (2) as a country in respect of which this Act applies.

(2) The Governor in Council may by proclamation designate any Commonwealth country, except Canada or any country mentioned in paragraph (1) (a), as a country in respect of which this Act applies.

(3) Where it appears to the Governor in Council that a country in respect of which this Act applies has, in relation to Canada, failed to accord immunities similar to those provided for by this Act, the Governor in Council may, by proclamation,

- (a) declare that this Act does not apply in respect of that country, or
- (b) declare that this Act applies in respect of that country only in such manner and to such extent as is specified in the proclamation,

and upon the issue of such proclamation this Act applies in respect of that country as specified in the proclamation.

(4) The Governor in Council may by further proclamation amend or revoke any proclamation issued under subsection (3).

10. (1) This Act applies in respect of an associated state only when the Governor in Council has pursuant to subsection (2) declared it to be applicable in respect of that state, and it applies in respect of that state only to the extent declared by the Governor in Council pursuant to that section.

(2) The Governor in Council may by proclamation

- (a) designate any country as an associated state for the purposes of this Act;

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- (b) declare the extent to which this Act is applicable in respect of any associated state;
- (c) declare any of the provisions of *The Visiting Forces (British Commonwealth) Act, 1933*, *The Visiting Forces (United States of America) Act* or *The American Bases Act, 1941*, being No. 12 of the Acts of Newfoundland, 1941, to be inapplicable in respect of any associated state;
- (d) designate civilian personnel as a civilian component of a visiting force belonging to an associated state that is not a party to the Agreement; and
- (e) revoke or amend any designation or declaration made under paragraph (a), (b), (c) or (d).

Sometimes it is not clear whether an application provision restricts or enlarges. For example, if an Act is declared to *apply to territorial lands* it could mean one of two things.

1. It applies to other lands. There is doubt whether it applies to territorial lands. It is therefore declared that it applies to territorial lands.
2. It applies to territorial lands and no other.

If the context does not leave the meaning absolutely clear, it is desirable to add further words to the application section — e.g. *also* if the application is additional, *only* if the application is exclusive.

An application section may be used to make it clear that an Act either does or does not operate retrospectively.

Sections 1 to 4 and section 6 of this Act are applicable only to loans made after the 31st day of December 1956.

This Act applies to

- (a) all inventions made after the 1st day of June, 1954, and
- (b) all inventions, whenever made, in respect of which an application for a patent is made in Canada after the 1st day of June, 1954.

Nothing in this Act affects any action or proceeding commenced prior to the coming into force of this Act.

15. Savings and Transitional

A savings provision is one that saves a law or a right from destruction; a transitional provision is one that provides for the application of new law to current situations. The two kinds of provisions are often intermingled; and a single provision may, from one point of view, be regarded as saving, and from another as transitional. The terms *savings* and *transitional* do not have precise meanings.

The necessity for special provisions of this character arises where a law is abrogated or changed.

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Section 36 of the *Interpretation Act* is usually enough where a law is repealed, or where some provisions of an Act are changed. But serious problems may arise where a whole Act is repealed and a revised one substituted for it. The following are some illustrations.

(a) *Savings*

All nominations, appointments, rules, regulations, by-laws and orders, including orders of the Governor in Council, made under any enactment repealed by this Act, continue good and valid until they are rescinded, amended or varied or others are made in their stead.

For a period of one year after the day on which this Act comes into force, sections 4, 5 and 6 do not apply in respect of international river improvements existing on that day.

10. In this Part, "Old Act" means the *Unemployment Insurance Act, chapter 273 of the Revised Statutes of Canada, 1952, as in force immediately before the coming into force of this Act.*

11. (1) Subject to this section, the old Act is repealed.

(2) Where a benefit year or supplementary benefit period was established in respect of a person under the old Act and that benefit year or supplementary benefit period had not terminated at the coming into force of this Act, the benefits payable under the old Act if it had remained in force shall be paid under this Act, subject to such adaptations and modifications as are prescribed by regulations made by the Commission with the approval of the Governor in Council.

(3) The old Act shall be deemed to continue in force for the purposes of the *Veterans Benefit Act, 1954*, except that the amount of contributions and rates of benefit prescribed by this Act shall apply as prescribed by regulations made by the Commission with the approval of the Governor in Council.

(4) An application for benefit pending under the old Act at the coming into force of this Act shall be dealt with under the provisions of the old Act.

(5) Where, at the coming into force of this Act, any amount is owing to the Fund as established by the old Act, such amount shall be deemed to be owing to Her Majesty under this Act, and when paid or collected shall be credited to the Fund established by this Act.

(6) A refund of contributions payable under the old Act shall be deemed to be a refund of contributions payable under this Act.

(7) The powers and functions of any body or person under the old Act with reference to any matter arising under the old Act by virtue of this Part or the *Interpretation Act* shall be exercised or performed by the corresponding body or person under this Act.

(8) A disqualification imposed under subsection (2) of section 46 of the old Act and in effect at the coming into force of this Act shall be deemed to have been imposed under section 65 of this Act.

12. (1) The persons who held office as Chief Commissioner and Commissioner under the old Act immediately before the coming into force of this

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Act shall be deemed to have been appointed Chief Commissioner and Commissioner respectively under this Act for the unexpired portions of the respective terms to which they were appointed under the old Act.

(2) The courts of referees and panels of members existing under the old Act immediately before the coming into force of this Act shall be deemed to have been constituted boards of referees and panels respectively under this Act, and a chairman of a court of referees shall be deemed to be a chairman of a board of referees.

(3) Persons who were inspectors, insurance officers or commissioners for oaths under the old Act immediately before the coming into force of this Act shall respectively be deemed to have been authorized as inspectors, insurance officers or commissioners for oaths under this Act.

(4) Persons who immediately before the coming into force of this Act were umpire, deputy umpires, members of committees, officers, clerks or employees under the old Act shall respectively be deemed to have been appointed to the corresponding offices and positions under this Act.

(5) Any agreement made under section 115 of the old Act in force at the coming into force of this Act continues in force as though it had been made under section 101 of this Act.

10. (1) The *Bank Act*, chapter 12 of the Revised Statutes of Canada, 1952, and *The Home Bank Creditors' Relief Act*, 1925, chapter 45 of the statutes of 1925, are repealed.

(2) Notwithstanding subsection (1), the charter of the Home Bank of Canada remains in force for the purpose of enabling the liquidator of the bank to wind up the business of the bank.

Nothing in this Act shall be held to prejudice any right, benefit or privilege that any person had, under any of the enactments to which this Act applies, prior to the coming into force of this Act.

(b) *Transitional*

10. (1) Sections 18 to 22 of the said Act are repealed.

(2) Notwithstanding subsection (1), any matter arising after the coming into force of this Act in respect of loans made under section 19 of the *Canadian Farm Loan Act* shall be governed and dealt with under the provisions of sections 19, 20 and 22 of that Act as though those sections had not been repealed.

Section 44 of the *Supreme Court Act*, as enacted by this Act, applies to all applications for leave to appeal heard by the Supreme Court of Canada after the time this Act comes into force, whether the application was made before or after that time; and in the case of any application for leave to appeal made before that time under section 597 or 598 of the *Criminal Code*, those sections of the *Criminal Code* shall, for the purposes of the said section 44, be deemed to have authorized an appeal to the Supreme Court of Canada with leave of that Court.

10. (1) Where proceedings for an offence against the criminal law were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, inquired into, tried and

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determined in accordance with this Act, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force, but where, under this Act, the penalty, forfeiture or punishment in respect of the offence is reduced or mitigated in relation to the penalty, forfeiture or punishment that would have been applicable if this Act had not come into force, the provisions of this Act relating to penalty, forfeiture and punishment shall apply.

(2) Where proceedings for an offence against the criminal law are commenced after the coming into force of this Act the following provisions apply, namely,

- (a) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;
- (b) if the offence was committed before the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act or by the law that would have applied if this Act had not come into force, whichever penalty, forfeiture or punishment is the less severe; and
- (c) if the offence is committed after the coming into force of this Act, the penalty, forfeiture, or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture, or punishment authorized or required to be imposed by this Act.

10. (1) Every deportation order, permit, warrant, order, direction, notice or other document that was issued, made or granted under the laws respecting immigration that were in force before the commencement of this Act and that was valid immediately prior to the commencement of this Act shall be given effect as if issued, made or granted under this Act.

(2) Unless the Minister directs that they be continued and completed under the provisions of the laws respecting immigration that were in force before the commencement of this Act, all examinations, investigations, inquiries, appeals or other matters relating to landing, entry or deportation of any person that were commenced pursuant to such laws and are not completed at the time of the commencement of this Act shall be continued and completed pursuant to the provisions of this Act as far as such provisions can be adapted.

10. (1) Subject to this section, every person who, immediately prior to the coming into force of this Act, was eligible for and in receipt of an allowance under *The War Veterans' Allowance Act, 1946*, shall be deemed to have been awarded on the day this Act comes into force, the allowance under this Act for which he is eligible.

(2) Every person who, immediately prior to the coming into force of this Act, was in receipt of an allowance under *The War Veterans' Allowance Act, 1946*, may be paid an additional allowance equal to the amount that he would have been eligible to receive under this Act in respect of the period between the 1st day of January, 1952, and the coming into force of this Act, if this Act, except section 4, had been in force during that period, less any amount that he was eligible to receive under *The War Veterans' Allowance Act, 1946*, in respect of that period.

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(3) Every person

- (a) who was awarded an allowance under *The War Veterans' Allowance Act, 1946*, whose allowance was discontinued and was not being paid immediately prior to the coming into force of this Act, for the reason that the amount of his income rendered him ineligible for the allowance, or
- (b) who, prior to the coming into force of this Act, applied for an allowance under *The War Veterans' Allowance Act, 1946*, but was not granted the allowance for the reason that the amount of his income rendered him ineligible for such an allowance,

may apply for and be granted an allowance in respect of the period between the 1st day of January, 1952, and the coming into force of this Act, equal to the amount that he would have been eligible to receive under this Act, if this Act, except section 4, had been in force during that period, less any amount that he was eligible to receive under *The War Veterans' Allowance Act, 1946*, in respect of that period.

(4) The provisions of this Act and regulations relating to the recovery of overpayments of allowances apply in respect of overpayments of allowances made under *The War Veterans' Allowance Act*, chapter 48 of the statutes of 1930.

A valid and subsisting certificate as a Dominion Topographical Surveyor or a valid and subsisting commission as a Dominion Land Surveyor issued under the *Dominion Lands Surveys Act*, shall have the same force and effect as a certificate or commission, respectively, granted under this Act.

Naturalization proceedings that were commenced under the *Naturalization Act* but not completed before the 1st day of January 1947, may be continued as proceedings for a grant of a certificate of citizenship under this Act and, for this purpose, an application for naturalization or a declaration of intention to become naturalized under the *Naturalization Act* and regulations shall, respectively, be deemed to have the same effect as an application for the grant of a certificate of citizenship or a declaration of intention to become a Canadian citizen under this Act.

10. (1) The Foreign Exchange Control Board established by this Act shall be the successor to the Foreign Exchange Control Board established by Order of His Excellency the Governor General in Council of the 15th day of September, 1939, as amended, and continued by Order of His Excellency the Governor General in Council, of the 13th day of December, 1940, as amended, and the said Orders shall be deemed to have been revoked on the coming into force of this Act, and all acts and things done and matters and proceedings commenced by the last mentioned Foreign Exchange Control Board under the said Orders shall be continued by the Board under this Act.

(2) Every regulation, instruction, licence, permit and other act or thing enacted, made, given or done by or on behalf of the Foreign Exchange Control Board under the provisions of the Orders of His Excellency the Governor General in Council referred to in subsection (1), shall be deemed to have been enacted, made, given or done by the Governor in Council or the Board under this Act except to the extent, if any, to which any such

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regulation, instructions, licence, permit or other act or thing is inconsistent with this Act and until varied or revoked under this Act.

(3) Any licence granted under the Orders of His Excellency the Governor General in Council mentioned in subsection (1) before the commencement of this Act shall be deemed to be a permit for the purpose of this Act.

10. (1) All proceedings in prize commenced in the Court or before any judge prior to the commencement of this Act shall be continued in the Court as if they had been originally commenced pursuant to this Act and before the judge before whom such proceedings would have been brought under this Act, and where any proceedings in prize were commenced before the Court prior to the commencement of this Act in the exercise of any jurisdiction had or exercisable by the Court before the commencement of this Act, and not conferred on the Court by or under this Act, the Court shall continue to have and exercise the said jurisdiction for the purpose of final disposition of the said proceedings.

(2) General orders and rules in force at the time of the commencement of this Act in respect of the exercise of jurisdiction in prize by the Court and the practice and procedure therein shall, except in so far as inconsistent with this Act or orders or regulations made under this Act, be deemed to have been re-enacted under this Act immediately after this Act came into force and shall govern the exercise by the Court of the prize jurisdiction conferred on it by this Act until revoked or amended.

(3) All officers or persons appointed or empowered to act in respect of any proceedings in prize in the Court commenced prior to the commencement of this Act shall continue to perform the duties and exercise the powers imposed or conferred on them for the purpose of the exercise by the Court of the prize jurisdiction conferred on it by this Act until their appointment or authority is revoked.

PRINTING STYLE

Printing style is a matter of taste. The following is the practice generally observed in printing the statutes and regulations of Canada.

Capitals

Such words as *Act*, *Order in Council* and *Proclamation*, when referring to an Act of the Parliament of Canada or to a particular order or proclamation of the Governor General in Council should begin with capitals.

A reference in an Act to a schedule or form annexed to the Act should be *Schedule* and *Form*: but no capitals should be used where the reference is to the schedule or form in general, e.g., *the Minister may prescribe forms*.

Titles of books, statutes, newspapers or periodicals, including every important word in the title, begin with a capital.

Names of months, days of the week, holidays and historical days begin with a capital.

The titles of governments, departments of government, corporations and societies, together with each of the leading words in such titles, begin with a capital.

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When a title is intended to apply to a particular person, government, department, corporation or society, the word should begin with a capital as *the Minister, the Department* (referring to a particular minister or department); *the Chief Justice* (referring to a particular chief justice); *the Plaintiff* (referring to a particular plaintiff); lower case is used in referring to any one of a class, or if the word is preceded by the indefinite article as *a department, any chief justice, any plaintiff*.

Geographical, national or personal qualifiers when used as nouns or before nouns in common use to specify merchandise, do not take capitals, as *india rubber, prussian blue, china*, etc. In other cases such words used as qualifiers should take a capital as *French language, American duties*.

When a geographical or proper name is used to qualify another, such as island, river, street, etc., the qualified word should also take a capital, as *St. John River, the Province of Ontario, the County of Carleton*.

In any enumeration of subjects introduced by governing words, the enumerations do not begin with capitals. For example,

The following persons are exempt from liability to service on juries:

- (a) members of the Queen's Privy Council for Canada;
- (b) judges of all courts of justice;
- (c) members of the executive councils of provinces;

Likewise, where a section is divided into paragraphs and subparagraphs for the purpose of aiding or facilitating reading or construction, capitals should not be used. For example,

The Board may dispose of an appeal by

- (a) dismissing it, or
- (b) vacating the assessment.

In the interpretation section the word defined does not take a capital unless it begins with a capital in the text.

Where an Act is divided into Parts, the word *Part*, wherever used in the statutes, referring to one of these, should begin with a capital.

In the divisional headings over each group of sections each letter should be a small capital; divisional sub-headings are printed in italics, with the leading words capitalized.

The leading words of the short title begin with capitals, but the article *the* that precedes the title, should not begin with a capital.

Punctuation

Where there are paragraphs or subparagraphs of a tabular character, they are usually separated by semicolons. Where, however, the division into paragraphs is made for the purpose of facilitating the reading and construction, a comma is used at the end of each paragraph marked (a), (b), (c), etc., or subparagraph lettered (i), (ii), (iii), etc. A comma should not follow the conjunction *and* or *or* inserted between paragraphs or subparagraphs.

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A period is always used at the end of a subsection.

Where figures or letters are used in parentheses to mark a paragraph there should be no period or other punctuation mark following the letter or figure.

Italics

The names of books, newspapers, etc., when referred to, are printed in italics, as the *Canada Gazette*.

Where an Act is referred to by reference to the long title, the title is italicized, including the article, *An* preceding the title, as *An Act respecting banks and banking*.

The short title, but not including the article preceding the short title, should be written in italics, whether printed at the beginning of the Act, or used in other places for purposes of reference. The long title at the beginning of an Act should not be in italics, but a reference in the text should be italicized.

Reference to subsections, etc.

Where reference is to a paragraph or subparagraph by number the reference should include the parentheses, thus *paragraph (a)*, *subparagraph (i)*.

Spacing and Arrangement

Where there are lettered paragraphs they should be slightly moved over to the right; and if there are subparagraphs under these the subparagraphs should be moved still further to the right. The governing words at the beginning and end should maintain the uniform width of the page.

There is one important exception to the rule stated above. Occasionally a section is divided into paragraphs, followed by general words, and then further divided into paragraphs. If the paragraphs in the first group are lettered (*a*), (*b*), (*c*), etc., and those in the second group are numbered (*i*), (*ii*), etc., the numbered paragraphs should be brought out to the left-hand side as far as the lettered paragraphs. Alternatively, and this is the current practice, the lettering could be carried throughout the whole provision, the first group being (*a*), (*b*), (*c*) and the second group (*d*), (*e*).

CHAPTER II

SUBORDINATE LEGISLATION

1. Introduction

Not all laws are made by Parliament. In most modern statutes, Parliament delegates to some other body or person the authority to make laws. Various words may be used to describe the instruments that may be issued in the exercise of a delegated legislative authority. Thus, they may be described as orders, rules, regulations, by-laws. Not infrequently two or more of these words, or similar expressions, are used. Thus, a Minister may be authorized *to make orders and regulations*. These terms do not have precise meanings and in many instances are interchangeable. But they are not always synonymous. Some instruments are best described as *orders*, others as *regulations*, others as *by-laws*, etc.

The meaning to be ascribed to these various terms depends a good deal on custom or usage. The general meanings given to these terms under Canadian legislation are along the following lines.

(a) Orders

The term *order* is used to describe a particular direction, usually to a particular person to do or abstain from doing a particular thing. Legislation is usually considered to be general rules of continuing application to the general public or to a particular class, the members of which class may change from time to time. Similarly, an order, made under statutory authority, as, for example, an order by a Minister to a taxpayer to file a supplementary return, would hardly be called a *regulation*; and it is not what one normally regards as a *law*. And an order issued by a court, for example, could hardly be called a regulation or a law. Yet, if Parliament enacted a statute directing a named person to do something, it would undoubtedly be classified as a law.

The term *order* is sometimes used to describe the instrument establishing regulations. Thus, the Governor in Council may issue an order (Order in Council) ordering that certain regulations annexed thereto be established.

Authority may also be granted to *direct, declare, authorize, consent*, etc. Instruments issued in the exercise of such a power would again not usually be called regulations.

(b) Rules

The term *rule* is usually applied to describe an enumeration of the successive steps that must be followed to accomplish a particular result. For

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example, court procedure is governed by *rules* rather than *regulations*. Rules are usually of a procedural character.

(c) *By-laws*

The term *by-law* is applied to rules made by an association or corporation for the regulation of its proceedings. The by-laws may go beyond the proceedings of the association or corporation itself and govern the conduct of other persons. For example, a harbour authority would make by-laws for its internal management and also by-laws for the management of the harbour.

(d) *Regulations*

A regulation is generally, in form and substance, of the same character as a statute. The term may be applied to the whole instrument or to a particular provision of it. In the case of an Act of Parliament, the term *statute* or *Act* is used to describe the whole instrument and other words, like Part, section, etc., are used to describe individual provisions.

In dealing with subordinate legislation here, the term *regulations* will be used for the most part and in the general sense indicated above.

(e) *Regulation-making authorities*

In Canada regulations are usually made by the Governor in Council; the enacting instrument is therefore an order in council. In some statutes a Minister is authorized to make regulations. Subject perhaps to minor insignificant exceptions, authority to make regulations is never conferred on any official below a Minister.

Authority is sometimes conferred on public authorities, as, for example, the Unemployment Insurance Commission, the Central Mortgage and Housing Corporation, the Canadian Radio-Television Commission. Regulations affecting public rights usually require the approval of the Governor in Council. This limitation may be imposed in one of two ways; either by providing that the regulations shall not be valid or effectual until so approved, or by conferring the authority *with the consent of* or *subject to the approval of* the Governor in Council.

2. General Power

Most modern statutes are not in themselves complete workable laws; further laws are needed to make them wholly effective. Instead of enacting them, Parliament confers authority on some person to make them.

Many different forms may be used to authorize regulations to round out the provisions of the Act, and a great variety is to be found in the statutes. The general form most commonly used now is—

The Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

It is doubtful whether the foregoing would authorize anything more than purely administrative regulations. Indeed, it would be dangerous to rely on such a provision as authorizing regulations altering substantive rights.

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The following examples, although in different words, probably have the same effect.

for carrying the purposes and provisions of this Act into effect.

providing for the effective carrying out of the provisions of this Act.

for carrying out the provisions of this Act according to their true intent and meaning.

to give effect to the provisions of this Act.

for the better execution of this Act.

Sometimes authority is conferred to make regulations *not inconsistent with* the Act. These words are unnecessary. Even in their absence it would not be permissible to make regulations contrary to or inconsistent with the Act itself. And the *Interpretation Act* makes it unnecessary to provide that the regulations may be made *from time to time* or that the regulations *may be revoked and others made in their stead*.

Sometimes the authority is to make *such regulations as are necessary* for carrying out the Act. Again, these words appear to be valueless.

A wider authority is conferred if a subjective test of necessity is prescribed. Thus, power may be conferred on the Governor in Council to make *such regulations as he deems necessary (advisable, expedient) for carrying out the purposes* of the Act. In such a case the regulation-making authority is the sole judge of necessity and the courts would not question his decision, even if they thought otherwise, except possibly if bad faith were established. There is, therefore, a vast difference between the two following examples in the extent of the power conferred.

make such regulations as may be necessary for carrying out the provisions of this Act.

make such regulations as he deems necessary for carrying out the provisions of this Act.

3. Particular Purposes

In the foregoing examples the limits of the authority conferred are set by the purposes of the Act, which, in turn, must be gathered from the terms of the Act. There is no statement of express purpose.

Authority to make regulations may be conferred by defining a particular purpose.

The Governor in Council may make regulations for the control and regulation of air navigation over Canada and the territorial waters of Canada.

for the purpose of preventing the spreading of contagious or infectious diseases among animals.

for the proper management and regulation of the sea-coast and inland fisheries.

for regulating the export and import of agricultural products.

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The foregoing examples constitute a wider authority than the general forms previously considered. In the case of a statute with power to make regulations for the better carrying out of the provisions thereof, Parliament has at least given effect to a legislative purpose by the enactment of the main principles of law essential to the implementation of that purpose, and has left it to others to fill in the details. But where Parliament authorizes regulations for a stated purpose, the regulation-making authority has a free hand to establish, not only the details, but also the main principles. The entire law is therefore to be left to the decision of subordinates. So long as the law is within the stated purpose, it cannot be challenged.

Even greater authority is conferred by authorizing a delegate to make such regulations *as he deems necessary* for a stated purpose. In considering a statute of this kind, the Chief Justice of Canada in the *Reference re Chemical Regulations* (1943) S.C.R.1 at p.12 (approved by the Privy Council in *Attorney General for Canada v. Hallet and Carey Limited* (1952) A.C.445) said

I cannot agree that it is competent to any court to canvass the considerations which have, or may have, led him to deem such regulations necessary or advisable for the transcendent objects set forth... The words are too plain for dispute; the measures authorized are such as the Governor General in Council (not the courts) deem necessary or advisable.

A statement of purposes may be introduced by expressions such as *for*, *for the purpose of*, *in order to*, etc.

4. Subject-matter

Authority to make regulations may be conferred by assigning a subject-matter of legislation.

may make regulations respecting the use, operation and supply of transport and storage facilities

may make regulations with respect to the export and import of animals relating to the construction and operation of factories in relation to explosives

This again is a wide authority, embracing any regulation for any purpose coming within the defined subject. A subject-matter of regulation may be assigned by expressions like, *respecting*, *with respect to*, *in relation to*, *relating to*, etc.

5. Particular Powers

Authority to make regulations is frequently conferred, not by defining a legislative purpose or subject-matter, but by conferring power to make a specific regulation. There is an important distinction between the two forms. For example, authority to make regulations

for the purpose of restricting or prohibiting the export of agricultural products

sets forth the objective that may be attained by regulations. Any regulation having for its purpose the restriction or prohibition of exports would come

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within the powers conferred. Thus, regulations could provide for a multitude of ancillary or related matters.

On the other hand, authority to make regulations

prohibiting or restricting the export of agricultural products

is more restrictive. Here we do not have a statement of objectives, but only a definition of a specific power — to prohibit or restrict. It would be open to doubt whether a regulation, for example, requiring dealers or carriers to make returns showing stocks on hand would be valid. Such a regulation might well be necessary *for the purpose of* restricting export, but it could hardly be described as a regulation that *restricts* exports.

The distinction between purposes or subjects, on the one hand, and powers on the other, is also relevant in relation to sub-delegation. For example, if a Minister had power to make regulations *respecting tariffs and tolls* he could authorize some other person to fix a tariff or toll; such a regulation would clearly be one *respecting* tariffs and tolls. But if the Minister's authority is to make regulations *prescribing tariffs and tolls* then the Minister must himself prescribe, and cannot delegate that authority to another. Expressions commonly used to introduce specific powers are *prescribing, fixing, determining, prohibiting, requiring, establishing*.

6. Omnibus Clauses

In all but the simplest cases it is usual to include an omnibus provision, either before or after an enumeration of specific purposes, subjects or powers.

Where an enumeration follows the omnibus provision, it is usual to provide that the enumeration is not to be construed as restrictive.

The following are some examples:

The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect, and, without limiting the generality of the foregoing, may make regulations providing for

The Governor in Council may make regulations establishing grades with appropriate grade names for any class of dairy products and, without limiting the generality of the foregoing, may, by such regulations

(a) prescribe the terms and conditions on which and the manner in which dairy products may be graded under this Part;

The Governor in Council may make regulations

(a) prescribing standards of grade, class or quality for marine plants and the names or marks that may be used to designate such grade, class or quality;

(b) providing for inspection, grading and labelling of marine plants, the form, issue and use of inspection certificates; and

(c) generally for carrying any of the purposes or provisions of this Part into effect.

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7. Enumeration

Authority to make regulations is usually set out in tabular form. The tabulation may set out purposes only, subjects only, specific powers only, or may be a mixture of these various classes of authority. If the enumerations are all of one class, the governing participle or preposition may be put in the general words preceding the enumeration.

may make regulations for the purpose of

(a)

(b)

may make regulations respecting

(a)

(b)

may make regulations prescribing

(a)

(b)

But where there is a mixture of classes, the governing participle, preposition or phrase must be placed within each enumeration.

may make regulations

(a) for...

(b) for the purpose of...

(c) respecting...

(d) prescribing...

(e) determining...

Where there is a mixture, care must be taken to see that the introductory words fit each enumeration.

may make regulations for

(a) the conservation and protection of game

(b) the issue of licences

(c) the terms and conditions of licences.

In the foregoing example, the preposition *for* does not fit paragraph (c). The form should be

may make regulations

(a) for the conservation and protection of game

(b) providing for the issue of licences

(c) prescribing the terms and conditions of licences.

The following are illustrations of some of the different methods of enumerating authority to make regulations.

(a) *Purposes*

The Governor in Council may, from time to time as he deems expedient, make regulations for

(a) the preservation, control and management of the Parks;

(b) the protection of the flora;

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- (c) the protection of wild animals, the disposal of noxious, predatory or super-abundant animals and the taking of animals for scientific and propagating purposes;
- (d) the management and regulation of fishing, and the protection of fish, including the prevention and remedying of any obstruction or pollution of waterways;
- (e) the prevention and extinguishing of fire upon or threatening Park lands, and requiring persons residing or being in the vicinity to report any such fire or to assist in its extinguishment;
- (f) controlling trades, traffic, business, amusements, sports, occupations and other activities or undertakings, and prescribing the places where any such activities or undertakings may be carried on, and the levying of licence fees in respect thereof;
- (g) the preservation of public health and the prevention of disease;
- (h) the abatement and prevention of nuisances.

(b) Subjects

The Governor in Council may make regulations for carrying into effect the purposes and provisions of this Act, and, without restricting the generality of the foregoing, may make regulations respecting

- (a) the information to be furnished by applicants for licences and the procedure to be followed in applying for licences and in granting licences;
- (b) the duration of licences, the quantities that may be exported or imported under licences and any other terms or conditions to which licences may be subject;
- (c) units of measurement and measuring instruments or devices to be used in connection with the exportation of power or fluids or the importation of gas;
- (d) the inspection of any instruments, devices, plant, equipment, books, records or accounts or any other thing used for or in connection with the exportation of power or fluids or the importation of gas; and
- (e) reports or other information to be supplied by persons to whom licences have been granted and any other matter associated with their use.

The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and, without restricting the generality of the foregoing, may make regulations respecting

- (a) the duties of inspectors and their assistants;
- (b) the replacement and use of standards of weights and measure;
- (c) the methods of inspecting, verifying and stamping weights, measures, weighing machines, measuring machines and local standards and of certifying such verification;
- (d) the amount of error that may be tolerated in weights, measures, weighing machines and measuring machines;

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- (e) the shapes, dimensions and proportions to be required in weights, measures, weighing machines and the materials of which they are made;
- (f) the marking of denominations on weights, measures, weighing machines and measuring machines;
- (g) the weights, measures, weighing machines or measuring machines that shall or shall not be legal for use in trade and how they shall be marked to so indicate;

(c) *Powers*

The Governor in Council may by regulation

- (a) determine the maximum loan that may be made in respect of a house or housing project;
- (b) determine the minimum period of amortization of an insured loan;
- (c) subject to sections 4 and 6, determine the maximum charges that may be made by an approved lender or holder of an insured loan in respect of the making and administration thereof;
- (d) authorize the taking of a chattel mortgage, an assignment of rents or other security as further security for loans made under this Part and Part II, and prescribe the circumstances in which such further security shall be taken;
- (e) prescribe the form of the insurance policy that may be issued in respect of an insured loan and of the mortgage that shall be taken in respect thereof;
- (f) prescribe such other forms as may be required in connection with the making or administration of an insured loan; and
- (g) make provision for any matters concerning which he deems regulations are necessary or desirable to carry out the purposes or provisions of this Part.

Subject to the approval of the Governor in Council, the Board may make regulations

- (a) requiring air carriers to file with the Board returns with respect to their capital, traffic, equipment, working expenditure and any other matters relating to the operation of commercial air services;
...
- (d) establishing classifications or groups of air carriers or commercial air services;
...
- (f) excluding from the operation of the whole or any part of this Part or any regulation, order or direction made or issued pursuant thereto, any air carrier or commercial air service or class or group of air carriers or commercial air services;
- (g) prescribing fees for licences to operate commercial air services and requiring applicants for such licences to furnish information respecting their financial position, their relation to other air carriers, the nature of the proposed routes, the proposed tariffs of tolls and such other matters as the Board may consider advisable;
- (h) prescribing forms for the purposes of this Part;
...

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- (k) prescribing the term of the licence and providing for renewal thereof;
- (l) prescribing maximum hours and other working conditions for pilots and co-pilots employed by any air carrier;
- (m) prescribing forms of accounts and records to be kept by air carriers, and providing for access by the Board to such records;
- ...
- (o) providing for the effective carrying out of the provisions of this Part.

(d) *Mixtures*

The Commission may, with the approval of the Governor in Council, make regulations,

- (a) defining the functions and scope of the employment service and the principles to be applied in carrying out the duties of the Commission under this Part;
- (b) for obtaining information respecting persons seeking employment and persons who have engaged or require employees or whose employees have left or are about to leave their employment; and
- (c) for regulating, prohibiting and licensing employment services carried on or operated by or on behalf of any person or agency, other than the Government of Canada or the government of a province.

The Governor in Council may make regulations

- (a) for authorizing, by means of licences, permits or otherwise,
 - (i) foreign fishing vessels to enter Canadian territorial waters for any purpose specified in the regulations, or
 - (ii) persons to do all or any of the things described in paragraphs 3(2) (a) to (e) or in subsection 3(3);
- (b) respecting the issue, suspension and cancellation of any licences or permits provided for under paragraph (a), prescribing their terms, conditions and forms and the fees payable therefor;
- (c) for appointing or authorizing persons to enforce the provisions of this Act and the regulations;
- (d) designating territorial waters of Canada for the purposes of this Act;
- (e) for securing and keeping any fishing vessels or things seized pursuant to this Act; and
- (f) generally for carrying out the purposes and provisions of this Act.

The Governor in Council may make regulations for carrying out and giving effect to the provisions of the Convention and anything done by the Commission thereunder, and without restricting the generality of the foregoing, may make regulations

- (a) for the conservation and protection of fish in the Convention area;
- (b) prohibiting, limiting or otherwise regulating
 - (i) the exploitation by citizens or residents of Canada or by Canadian fishing vessels of any stocks of fish in any part of the Convention area,

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- (ii) the loading, processing, transporting or possession of any stocks of fish in or from any part of the Convention area, and
- (iii) the landing, importation, sale or other disposal of fish caught in any part of the Convention area;
- (c) respecting the operation of fishing vessels and the use of fishing gear in the Convention area;
- (d) providing for the issue, suspension and cancellation of licences for the purposes of this Act, and prescribing their terms, conditions and forms and fixing the fees for the issue of licences;
- (e) for the seizure, forfeiture and disposition of fishing vessels including equipment or fishing gear, or fish, by means of or in relation to which any of the provisions of the regulations have been contravened;
- (f) prescribing the powers and duties of Protection Officers and other persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those duties and powers; and
- (g) prescribing the penalties that may be imposed, either on summary conviction on indictment, for violation of any regulation by any person in Canada or on, from or by means of any fishing vessels.

8. Particular Regulations

(a) *Act, amendment of*

The delegation of power to amend a statute is generally regarded as objectionable for the reason that the text of the statute is then not to be found in the statute book. In only a few cases are direct amendments to statutes of Canada authorized to be made by a subordinate authority, and in those cases it is only a Schedule that may be amended. There are situations where it is desirable to provide flexibility. The following are some examples:

amend the Schedule by diminishing the remedy allowance for coins of any denomination;

amend the Schedule by prescribing or altering the least current weight of coins of any denomination;

adding anything to any of the Schedules, in the interest of, or for the prevention of injury to, the health of the consumer or purchaser, or deleting anything therefrom;

adding to or removing from the list contained in Schedule A such abnormal physical states, disorders, diseases, or symptoms of diseases, and adding to or removing from Schedule B such material, as may be deemed by the Minister to be necessary in the public interest;

Provisions authorizing exemptions or exclusions from the operation of a statute are fairly common. The exemptions or exclusions are, in reality, amendments to the statute, but they do not take the form of a direct amendment to the statute.

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exempting from any requirements of this Act any drug or type of drug for which such control is deemed to be inadvisable and for removing such exemption as may be required;

excluding any property or class of property from the operation of this Act;

exempting any person or goods or any class of persons or goods from the operation of any or all of the provisions of this Act;

exempting any whales or species of whales from the application of the whole or any part of this Act;

exclude any kind of grain, or any grade or quality thereof, from the provisions of this Part, in whole or in part, either generally or for any specified period or otherwise;

exempting any food, drug, cosmetic or device from all or any of the provisions of this Act and prescribing the conditions of such exemption;

exempting any person or goods or any class of persons or goods from the operation of any or all of the provisions of this Act;

excluding from the operation of the whole or any part of this Part or any regulation, order or direction made or issued pursuant thereto, any air carrier or commercial air service or class or group of air carriers or commercial air services.

(b) Applications

the time, manner and form of making an application, the information and evidence to be submitted in connection therewith, and the procedure to be followed in the consideration of applications;

prescribing the time, manner and form of making applications, and the information and evidence to be furnished in connection therewith and the procedure to be followed in dealing with and approving applications;

prescribing the form in which applications for registration shall be made as provided in this Act;

prescribe the forms of and manner of completing applications for permit books, permit books and such other forms as may be necessary for the administration of this Act;

prescribe the manner in which applications for permit books shall be made and permit books shall be issued;

prescribing the information and undertakings to be furnished by applicants for permits, certificates or other authorizations under this Act, the procedure to be followed in applying for and issuing or granting permits, certificates or other authorizations, the duration thereof, and the terms and conditions including those with reference to shipping or other documents, upon which permits, certificates or other authorizations may be issued or granted under this Act;

(c) Books and Records

prescribing records to be kept and returns to be made by persons making application for payments under this Act or to whom such payments have been made;

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respecting records to be kept and reports to be made to the Department by persons processing, grading, shipping or transporting any livestock product; requiring persons who sell food, drugs, cosmetics or devices to maintain such books and records as the Governor in Council considers necessary for the proper enforcement and administration of this Act and the regulations;

specifying the character of the records to be kept by any class of licensees under this Act, and the form of the reports and returns to be made by any such class of licensees, and fixing the times when such reports and returns shall be made.

(d) Conservation

for the conservation and protection of whale resources;

the preservation, control and management of the Parks;

the protection of the flora;

the protection of wild animals, the disposal of noxious, predatory or super-abundant animals and the taking of animals for scientific and propagating purposes;

the management and regulation of fishing, and the protection of fish, including the prevention and remedying of any obstruction or pollution of waterways;

for the conservation and protection of fish in the Convention area;

prohibiting, limiting or otherwise regulating

- (i) the exploitation by citizens or residents of Canada or by Canadian fishing vessels of any stocks of fish in any part of the Convention area,
- (ii) the loading, processing, transporting or possession of any stocks of fish in or from any part of the Convention area, and
- (iii) the landing, importation, sale or other disposal of fish caught in any part of the Convention area;

for limiting the number of migratory game birds that may be taken by a person in any specified time during the season when the taking of such birds is legal, and providing the manner in which such birds may then be taken and the appliances that may be used therefor;

(e) Definitions

Authority to define words and expressions used in an Act may be objected to in Parliament if the authority can be used to enlarge or restrict the scope of the Act. If definitions are needed, it is generally better to have them in the Act. There are, however, situations where the need for flexibility may properly prevail.

defining residence in Canada and defining intervals of absence from Canada preceding an application that shall be deemed not to have interrupted residence in Canada;

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the definition of residence in Canada for the purpose of this Act and the extent of intervals of absence from Canada that shall be deemed not to have interrupted the continuity of residence.

the definition of income for the purposes of this Act, and the matter in which income is to be determined, including the income of a recipient and his spouse, and the determination of the amount thereof that each shall be deemed to receive, whether they live together or separate and apart;

to define for the purposes of this Act the following expressions:

- (i) “responsible officer of the bank”, and
- (ii) “authorized representative of the Minister of Veterans Affairs”;

defining and determining the circumstances in which property shall for the purposes of this Act be deemed to have been lost, destroyed or damaged by or in consequence of a fire;

(f) Delegation

authorizing a designated officer or class of officers to exercise powers or perform duties of the Minister under this Act.

(g) Fees

prescribe a tariff of fees for copies of maps, plans, field notes, documents, papers and other records pertaining to public lands, for the preparation of documents evidencing a sale, lease or other disposition of public lands and for the registration in any government department of any documents pertaining to public lands;

prescribing the fee or fees that may be charged by any official analyst for the examination and analysis of any fertilizer submitted to him for analysis under the provisions of this Act, and from time to time change the amount of such fee or fees as may be deemed advisable or necessary;

fixing the scale of costs, charges and fees in such causes or matters and regulating the taxation thereof, where costs are awarded for or against a party in any such cause or matter;

fixing the fees payable to the Court or its officers in respect of anything done or any proceeding taken in such causes or matters;

prescribing fees for licences to operate commercial air services and requiring applicants for such licences to furnish information respecting their financial position, their relation to other air carriers, the nature of the proposed routes, the proposed tariffs of tolls and such other matters as the Board may consider advisable;

prescribing the fees that may be charged by an official analyst for the examination or analysis of any pest control product submitted to him for analysis under this Act, and from time to time to change the amount of such fees as may be deemed advisable or necessary; the fees to be paid to inspectors for inspecting and verifying weights, measures, weighing machines and measuring machines or for weighing or measuring goods under this Act and the time, manner and evidence of payment thereof; and, in such cases as he deems proper, prescribing the fees that may be paid during a specified

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period, not exceeding one year, instead of upon each inspection and verification, and the time, manner and evidence of payment thereof;

(h) Forms

prescribe forms necessary for the administration of this Act;

prescribing forms necessary for the administration of this Act and the procedure for the making of applications for payments under this Act;

prescribe forms of leases, agreements of sale, licences and other documents required for use under this Act, but not including instruments issued under the Great Seal of Canada;

prescribing the form in which applications for registration and renewals of registration shall be made as provided in this Act;

prescribing forms necessary for the administration of this Act and the procedure for the making of applications for payments under this Act;

to prescribe the forms of receipts, notes and documents to be used in connection with the guaranteed loans or for the effective operation of this Act;

prescribing forms for the purposes of this Part;

prescribing forms of accounts and records to be kept by air carriers, and providing for access by the Board to such records;

(i) International Agreements

The Governor in Council may make such appointments, establish such offices, make such Orders in Council, and do such things as appear to him to be necessary for carrying out the Agreement set out in the Schedule to this Act or any resolutions of the Council of the United Nations Relief and Rehabilitation Administrations or its Committees in carrying out the provisions of the Agreement.

(j) Licensing

requiring the registration of establishments and the licensing of persons engaged as principals or agents in the export or import of fish or containers;

licensing pilots and other persons engaged in the navigation of aircraft, and the suspension and revocation of such licences;

providing for the issue, suspension and cancellation of licences for the purposes of this Act, and prescribing their terms, conditions and forms and fixing the fees for the issue of licences;

respecting the issue of and conditions or requirements applicable to general permits or general certificates;

providing for the issue, suspension and cancellation of licences, prescribing their terms, conditions and forms and the fees for the issue of licences;

governing the issuing of licences under this Act, specifying the information required to be furnished by applicants for each class of licence and the conditions upon which a licence is issued or renewed and approving the form of any such licence or renewal thereof;

for the licensing of dealers to deal in any agricultural product shipped from or to a place outside the province in which such dealer carries on business,

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and for the issue, cancellation and dispensation of licences including the prescribing of fees for the issue thereof;

to provide for the granting of licences for the transportation from one province to another province, or the sale or purchase for delivery anywhere in Canada, of wheat, that is otherwise prohibited under this Part, and to prescribe the terms and conditions on which such licences may be granted or the terms or conditions of the permission granted in such licence;

respecting the issue of, and conditions or requirements applicable to, general permits or general certificates;

prescribing the form and duration of licences, permits and certificates issued under this Act, the terms and conditions upon which such licences, permits and certificates shall be issued, and the fees to be paid therefor;

requiring any person or class of persons exporting any livestock or livestock product to obtain a licence upon such terms and conditions as may be deemed necessary in the public interest;

prescribing the information and undertakings to be furnished by applicants for permits, certificates or other authorizations under this Act, the procedure to be followed in applying for and issuing or granting permits, certificates or other authorizations, the duration thereof, and the terms and conditions, including those with reference to shipping or other documents, upon which permits, certificates or other authorizations may be issued or granted under this Act;

requiring any person or class of persons engaged in the grading of any livestock or livestock product to obtain a certificate upon such terms and conditions as may be deemed necessary in the public interest;

requiring any person or class of persons engaged in the shipping or transporting of any livestock or livestock product to register with the Department and prescribing the terms and conditions upon which registration shall be granted in the public interest;

providing for the issuance, renewal or cancellation of licences, certificates or registrations;

The Governor in Council may, for the purpose of developing and utilizing the water resources of Canada in the national interest, make regulations

- (a) respecting the construction, operation and maintenance of international river improvements;
- (b) respecting the issue, cancellation and suspension of licences for the construction, operation and maintenance of international river improvements;

the information to be furnished by applicants for licences and the procedure to be followed in applying for licences and in granting licences;

the duration of licences, the quantities that may be exported or imported under licences and any other terms or conditions to which licences may be subject;

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(k) Marketing

prohibiting the sale or offering for sale or holding in possession for sale of any fish or containers under any grade name or standard prescribed by the regulations under this Part unless all the requirements of this Part and the regulations thereunder with respect thereto have been complied with, or under any name calculated to mislead or deceive;

classifying and establishing grades for each kind of produce;

with respect to the inspection, grading, packages and packing, marking, shipment, advertisement and sale of produce produced within or without Canada;

prescribing standards of quality and grades;

respecting inspection, grading, packing, labelling, branding and marking and the manner thereof;

prescribing types, sizes and specifications of packages, packing material and methods of packing;

prescribing grades and standards for maple sugar and maple syrup or other maple products and the conditions under which and the locations or places where maple sugar and syrup or other maple products shall be graded;

prescribing the classes and kinds of commodities to which the national trade mark may be applied and the persons who may apply it;

prescribing the terms and conditions on which the national trade mark may be applied to commodities or packages or containers thereof;

prescribe the terms and conditions on which and the manner in which dairy products may be graded under this Part;

prescribe the sizes, dimensions and other specifications of packages in which a dairy product must be packed and the manner in which it must be packed as a condition to application or use of the name of a grade so established;

prescribing standards of quality and contents and fixing the permissible limits of variability for any feeding stuff or any ingredients or constituents thereof;

prescribing the unit or units in which shall be stated the net content weight of packages of feeding stuff;

prescribing particulars of the character, quality and quantity of ingredients of feeding stuffs to be marked on packages;

prescribing grades, quality and standards of fish;

respecting the processing, storing, grading, packaging, marking, transporting and inspection of fish;

(l) Penalties

The Governor in Council may prescribe the penalties that may be imposed for violations of orders and regulations made under this Act, and may also prescribe whether such penalties shall be imposed upon summary conviction or upon indictment, but no such penalty shall exceed a fine of five thousand dollars or imprisonment for any term not exceeding five years, or to both.

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the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment for violation of a by-law made under this section.

The Governor in Council may prescribe the penalty, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months or both fine and imprisonment, that may be imposed on summary conviction for violation of a regulation made under subsection (1).

impose penalties for violation of any such regulation by way of fine not exceeding two hundred dollars or imprisonment for a term not exceeding three months enforceable upon summary conviction.

the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment for violation of a by-law made under this section.

prescribing punishment upon summary conviction for the violation of any regulation including maximum and minimum fines not exceeding two hundred dollars and imprisonment not exceeding one month for default in payment of any such fine;

impose penalties for violation of any such regulation by way of fine not exceeding two hundred dollars or imprisonment for a term not exceeding three months enforceable upon summary conviction.

prescribing a fine not exceeding fifty dollars or a term of imprisonment not exceeding two months, or both fine and a term of imprisonment, to be imposed upon summary conviction as a penalty for violation of any regulation;

prescribing the penalties that may be imposed, either on summary conviction or on conviction on indictment, for violation of any regulation by any person in Canada or on, from or by means of any fishing vessels.

prescribing the penalties that may be imposed either on summary conviction or on conviction on indictment, not exceeding a fine of ten thousand dollars or imprisonment for a term of two years or both such fine and such imprisonment, for violation of any regulation by any person in Canada or on, from or by means of any ship;

prescribing the penalties that may be imposed by way of fine not exceeding one hundred dollars on summary conviction for contravention of or failure to comply with any regulations.

10. (1) Subject to subsection 2, the Governor in Council may prescribe a fine or a term of imprisonment or both a fine and a term of imprisonment as a penalty for violation of any order or regulation, and may also prescribe whether the penalty shall be imposed upon summary conviction or upon conviction under indictment or upon either summary conviction or conviction under indictment.

(2) The fine prescribed shall not exceed one hundred dollars for summary conviction and one thousand dollars for conviction under indictment and the term of imprisonment prescribed shall not exceed two months for summary conviction and two years for conviction under indictment.

prescribing penalties, enforceable on summary conviction, for

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- (i) contravention of or failure to comply with this Part or any such regulations or any direction or order made by the Board pursuant to this Act or such regulations,
- (ii) making any false statement or furnishing false information to or for the use or information of the Board, or
- (iii) making any false statement or furnishing false information when required to make a statement or furnish information pursuant to any regulation, direction or order of the Board,

but such penalties shall not exceed a fine of five thousand dollars or imprisonment for six months, or to both;

(m) Procedure

governing the practice to be followed on appeals from inspecting officers to grain appeal tribunals, fixing the fees or costs, if any, to be payable on such appeals, and directing the time and the mode of payment of any such fees or costs;

prescribe the procedure to be followed in applying for and issuing permits;

regulating the practice and procedure in causes or matters falling within the prize jurisdiction of the Court or a judge thereof;

prescribing rules of practice and procedure respecting

- (i) applications for patents pursuant to this Act,
- (ii) the determination of questions whether an invention is vested in Her Majesty by this Act, and
- (iii) any appeal or application under this Act to the Exchequer Court;

(n) Public Officers

prescribing the powers and duties of Registrars and Marshals or their deputies and the powers and duties of other officers of the Court, and for such other purposes governing the exercise of the prize jurisdiction of the Court or to give effect to the provisions of this Act or otherwise in relation to prize as he may deem advisable.

make provisions for the appointment of temporary civil officers, clerks and employees and determine their rates of compensation and conditions of employment;

the employment of officers, appraisers, inspectors, attorneys, clerks and other employees, their remuneration and their duties;

prescribing the powers and duties of Protection Officers and other persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those duties and powers;

notwithstanding the *Civil Service Act* or any other statute or law appoint and employ such professional, scientific, technical and other officers and employees as the Board deems necessary for the purposes of this Act;

with the approval of the Minister, fix the tenure of appointment, the duties and, subject to the approval of the Treasury Board, the remuneration of officers and employees appointed or employed by the Board;

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prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act;

(o) Reports and Returns

respecting information to be supplied by persons to whom permits, certificates or other authorizations have been issued or granted under this Act and any other matter associated with their use;

prescribing the information and evidence to be furnished by pensioners and the circumstances under and the form in which such information or evidence shall be submitted;

prescribing the information to be furnished in any application for a patent in respect of an invention made by a public servant;

respecting information to be supplied by persons to whom permits, certificates or other authorizations have been issued or granted under this Act and any other matter associated with their use;

requiring air carriers to file with the Board returns with respect to their capital, traffic, equipment, working expenditure and any other matters relating to the operation of commercial air services;

requiring any person to furnish information respecting ownership, transfer, consolidation, merger or lease or any proposed transfer, consolidation, merger or lease of commercial air services;

require any person engaged in the business of delivering, receiving, storing, transporting or handling grain, to make returns to the Board of information relating thereto or as to any facilities therefor, owned, possessed or controlled by him;

require any person to make reports or returns to The Canadian Wheat Board furnishing such information relating to the sale or purchase or storage of linseed oil by him either on his own behalf or on behalf of some other person as The Canadian Wheat Board deems advisable;

(p) Samples

prescribe the manner in which samples of any livestock product shall be taken.

for the taking of samples of explosives required for examination and testing, and for the establishing of testing stations, and of the tests and other examinations to which explosives shall be subjected;

describing the procedure to be followed, the instruments to be employed and the quantities to be taken in the taking of samples for official analysis by inspectors and by purchasers; the number of samples to be taken and how they shall be forwarded and preserved, and by whom; and the number and qualifications of impartial witnesses before whom samples of pest control products for official analysis shall be taken;

(q) Secrecy

for the purpose of keeping secret information respecting the production, use and application of, and research and investigations with respect to, atomic energy, as in the opinion of the Board, the public interest may require;

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(r) *Seizure and Forfeiture*

The Governor in Council may make regulations

- (a) respecting the detention of articles seized under this section and for preserving or safeguarding any articles so detained; and
- (b) respecting the disposition of articles forfeited under this section.

for the seizure, forfeiture and disposition of any whales or whale products by means of or in relation to which any of the provisions of this Act or the regulations have been contravened;

for the seizure, forfeiture and disposition of fishing vessels including equipment or fishing gear, or fish, by means of or in relation to which any of the provisions of the regulations have been contravened;

(s) *Taxation*

Authority to impose taxation by regulation is unusual. Occasionally, the power is granted by Parliament in special circumstances or for special purposes.

The Governor in Council may by proclamation

- (a) impose export duties, not exceeding ten dollars per annum per horse power, upon power exported from Canada, or not exceeding ten cents per thousand cubic feet on fluid exported from Canada, and such duties shall be chargeable accordingly after the publication of such proclamation,
- (b) from time to time remove or re-impose such duties or vary the amount thereof, and
- (c) exempt from the payment of such duties such persons as comply with the direction of the Governor in Council with regard to the quantity of power or fluid to be supplied to customers for use in Canada.

for the taxation, control and destruction of dogs and for the protection of sheep on reserves;

levying taxes upon the interest of any person in land in a Park in order to defray, in whole or in part, the cost of the establishment, operation, maintenance and administration of any public works, improvements or utility services and prescribing that such taxes may be levied with respect to any or all of the following lands,

(t) *Trade*

respecting the certification, authorization or other control of any in-transit movement through any port or place of any goods that are exported from Canada or of any goods that come into any port or place in Canada;

prohibiting or restricting any export or import or any attempt or offer to export or import any fish or containers unless all the requirements of this Part and the regulations thereunder with respect thereto have been complied with;

to prohibit the export of any fish or any portion of any fish from Canada or the taking or carrying of fish or any portion of any fish from any one province of Canada to any other province thereof;

The Governor in Council may make regulations for prohibiting

- (a) importation into Canada,

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- (b) exportation out of Canada, or
- (c) sending or conveyance from one province to another,

of an agricultural product of any class unless it complies with prescribed standards, has been prepared in accordance with prescribed conditions and is packed and marked in prescribed manner.

The Governor in Council may make regulations for prohibiting the carriage to a destination outside the province in which it was received of an agricultural product of a class for which grades have been established under Part I or of a class for which standards have been prescribed under this section unless

- (a) prescribed evidence that the product meets the requirements of this Act and the regulations has been obtained and produced as prescribed, and
- (b) the product is identified in prescribed manner as an agricultural product that meets the requirements of this Act and the regulations.

The Governor in Council may by regulation prohibit

- (a) importation into Canada,
- (b) exportation out of Canada, or
- (c) sending or conveyance from one province to another,

of a dairy product of any class unless it complies with prescribed standards, has been produced in accordance with prescribed conditions and is packed and marked in prescribed manner.

controlling trades, traffic, business, amusements, sports, occupations and other activities or undertakings, and prescribing the places where any such activities or undertakings may be carried on; and the levying of licence fees in respect thereof;

(u) Traffic

regulating the speed and parking of vehicles and prescribing routes of travel;

respecting one-way traffic, obstruction of traffic, and pedestrian traffic;

for directing traffic and erecting signs;

prohibiting traffic by such vehicles at such times, in such places and in such circumstances as may be prescribed in the regulations;

prohibiting unnecessary noise in the vicinity of buildings;

for the control of the speed, operation and parking of vehicles on roads within reserves,

(v) Treaties and Conventions

The Governor in Council may make regulations for carrying out and giving effect to the provisions of the Convention and any regulations and recommendations of the International Whaling Commission, and without restricting the generality of the foregoing, may make regulations.

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9. Restrictions

(a) *Conditions Precedent*

Before any such regulation is made notice thereof shall first be given to The Winnipeg Grain Exchange and The Winnipeg Grain and Produce Exchange Clearing Association Limited, and each of the said Associations or any member thereof shall be given an opportunity to be heard in connection therewith.

Prior to the making of regulations under the provisions of section 40 or in relation to the matters specified in subsections 87(2) and (3) the same shall be reported on by the Unemployment Insurance Advisory Committee.

(b) *Publication*

Express provision for the publication of regulations is not required in the ordinary case, as it is provided for in the *Statutory Instruments Act*. Failure to publish does not make the regulation invalid or inoperative, but it does impose restrictions on prosecutions under unpublished regulations. Occasionally it is desired to make the validity or effectiveness of regulations dependent upon publication.

No order made under this Act has effect until it is published in the *Canada Gazette*.

No regulation is effective until published in the *Canada Gazette* and, upon such publication, is effective and has the same force and effect as if it has been enacted in this Act.

All regulations made under this Act are effective from the date of publication in the *Canada Gazette*.

No regulation made under subsection (1) has effect until it is published in the *Canada Gazette*.

(c) *Report to Parliament*

No special provisions are required for the tabling of regulations in Parliament. Under the *Statutory Instruments Act* all regulations stand permanently referred to a Parliamentary review and scrutiny committee. The form previously used was along the following lines:

Every order made under this Act shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session thereof.

(d) *Publication and Report to Parliament*

Sometimes publication and tabling requirements are merged in one section.

Regulations made under this Act shall forthwith after approval by the Governor in Council be published in the *Canada Gazette* and shall be laid before Parliament within fifteen days after they are made if Parliament is then sitting, and, if not, then within fifteen days after the commencement of the next ensuing session.

Orders and regulations under this section shall forthwith be published in the *Canada Gazette* and laid before Parliament within fifteen days after they

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are made if Parliament is then sitting, and, if not, then within fifteen days after the commencement of the next ensuing session thereof.

An Order in Council made under this section is not effective until published in the *Canada Gazette* and shall be laid before Parliament within fifteen days after it has been made if Parliament is then sitting or, if Parliament is not then sitting, within fifteen days after the commencement of the next ensuing session thereof.

Regulations shall, when made, be published in the *Canada Gazette* and a copy thereof forwarded to the Minister who shall lay the same before Parliament forthwith if Parliament is in session or within fifteen days of the commencement of the next session of Parliament.

No regulation made under this Act comes into force until published in the *Canada Gazette*, and every regulation and every order of the Governor in Council made under this Act shall be placed before Parliament within fifteen days after it comes into force if Parliament is then sitting, or if Parliament is not then sitting, within fifteen days after the next ensuing session thereof.

Regulations made under this section go into force on the day of the publication thereof in the *Canada Gazette*, and they shall be laid before Parliament within fifteen days after the opening of the next session thereof.

(e) *Affirmative and Negative Resolutions*

It is no longer necessary to have extended provisions providing for the affirmation or annulment of a regulation by a resolution of Parliament or the House of Commons. All that is required is a provision in the Act that a regulation is subject to affirmative or negative resolution of Parliament or the House of Commons, as the case may be, and section 28.1 of the *Interpretation Act* fills in the details.

The following, however, are some examples of the kind of provision that formerly was occasionally inserted in an Act.

Every regulation shall be laid before both Houses of Parliament within the first fifteen days of the session next after the date thereof, and such regulation remains in force until the day immediately succeeding the date of prorogation of that session of Parliament and no longer unless during the session it is approved by resolution of both Houses of Parliament.

Every order in council made under this Act shall be laid before Parliament within fifteen days after it has been made if Parliament is then sitting, or if Parliament is not then sitting, within fifteen days after the commencement of the next ensuing session thereof, and if the Senate and House of Commons within the period of forty days, beginning with the day on which any such order in Council is laid before Parliament and excluding any time during which both the Senate and House of Commons are adjourned for more than four days, resolve that it be annulled, it ceases to have effect, but without prejudice to its previous operation or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred.

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If the Senate and House of Commons within a period of forty days, beginning with the day on which any regulation is laid before Parliament in accordance with this section and excluding any time during which Parliament is dissolved or prorogued or during which both the Senate and House of Commons are adjourned for more than four days, resolve that it be annulled, it ceases to have effect.

(f) Opportunity for Debate

There have been a few instances where special provision was made for debating a negative resolution.

10. Where a regulation has been laid before Parliament, a notice of motion in either House signed by ten members thereof, and made in accordance with the rules of that House within seven days of the day the regulation was laid before that House, praying that the regulation be revoked or amended, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.

CHAPTER III

APPROPRIATIONS

1. General

Two fundamental principles are involved in the financial operations of the Government. First, all public money must be paid into the Consolidated Revenue Fund. Second, no payments may be made out of the Consolidated Revenue Fund except with the authority of Parliament.

Public money is defined in the *Financial Administration Act* as follows:

“public money” means all money belonging to Canada received or collected by the Receiver General or any other public officer in his official capacity or any person authorized to receive or collect such money, and includes

- (a) duties and revenues of Canada,
- (b) money borrowed by Canada or received through the issue or sale of securities,
- (c) money received or collected for or on behalf of Canada, and
- (d) money paid to Canada for a special purpose;

The Consolidated Revenue Fund is not a chest of money and it is not situated in any one place. The Consolidated Revenue Fund is the aggregate of all public moneys on deposit to the credit of the Receiver General. Thus, if a payment of taxes is made to a public officer, it immediately becomes public money. Ultimately the money is deposited in a bank to the credit of the Receiver General; it then becomes part of the Consolidated Revenue Fund.

Many statutes involve the expenditure of public funds. The authority to spend must be found in some Act of Parliament. An authority to pay money out of the Consolidated Revenue Fund is known as an *appropriation*. The wording of the authority is now *pay out of the Consolidated Revenue Fund*. At one time the authority was to pay out of *unappropriated moneys* in the Consolidated Revenue Fund. The earliest appropriation Acts in Canada authorized a grant for certain purposes *out of the rates and duties* collected or to be collected. It was the practice then to levy rates and duties for specified purposes — to pay salaries, to build roads or for other public purposes. Many revenues, therefore, were earmarked for certain purposes. An appropriation in a later Act for some other purpose, if unqualified, could have been construed as an implied amendment of the taxing statute, thus authorizing the expenditure of the earmarked revenues for new purposes. To obviate such a construction, it was specified that the payment should be made out of *unappropriated* funds. Today, taxes are levied for general purposes and are not

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earmarked for particular purposes. It is, therefore, no longer necessary to specify that a payment be made out of *unappropriated* money.

Frequently a statute contemplates the expenditure of money, but does not itself make an appropriation. In such cases the required money is usually appropriated by the annual appropriation Acts. A statement in a statute that expenditures are *to be made out of money appropriated by Parliament* does not mean anything except that the statute cannot itself be regarded as an appropriation. Some examples are:

All allowances and costs payable under this Act shall be paid out of moneys appropriated by Parliament for the purpose.

All expenditures for the purpose of this Act shall be paid out of moneys appropriated by Parliament therefor.

2. Annual Appropriation Acts (Supply)

Most of the money required for the operations of the government is provided by annual Appropriation Acts. These Acts authorize the expenditure of a specific sum for the purposes enumerated in the Schedules. The authority under these Acts is to *apply* a specified sum out of the *Consolidated Revenue Fund towards defraying the several charges and expenses of the public service* from the beginning of a specified fiscal year to the end of that fiscal year.

The noteworthy feature is that the appropriation is for one fiscal year only; balances of the appropriations remaining unexpended at the end of the fiscal year lapse. The authority does not extend into any subsequent fiscal year.

The provisions of the *Financial Administration Act* governing the lapsing of unexpended balances are as follows:

The balance of an appropriation granted for a fiscal year that remains unexpended at the end of the fiscal year shall lapse, except that during the thirty days immediately following the end of the fiscal year a payment may be made under the appropriation for the purpose of discharging a debt payable for work performed, for goods received or services rendered prior to the end of the fiscal year, or payable under any other contractual arrangement prior to the end of that year, and such payment may be charged in the accounts for the fiscal year.

Occasionally an annual expenditure is authorized for a specified period.

The Minister may pay out the Consolidated Revenue Fund to the Commission the sum of two hundred thousand dollars a year for a period not exceeding ten years from the 1st day of April, 1943, to be expended by the Commission for the purposes and subject to the provisions of this Act.

The Governor in Council may authorize the payment, out of the Consolidated Revenue Fund of Canada, of an annual grant not exceeding one hundred and sixty thousand dollars, to aid in the development of the sea fisheries of Canada, and the encouragement of the building and fitting out

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of improved fishing vessels, and the improvement of the condition of the fishermen.

The Minister of Finance shall grant to the Corporation out of the Consolidated Revenue Fund the sum of four million seven hundred and fifty thousand dollars in the fiscal year that began on the 1st day of April, 1951, and the sum of six million two hundred and fifty thousand dollars in each of the four next following fiscal years.

3. Continuing Appropriations

An appropriation, not limited as to time by its terms will continue indefinitely or, if for a specific amount, until exhaustion. All appropriations, however, are limited in some way. There is first a limitation as to purpose — appropriations are made for some specified purpose and the expenditure can be made only for that purpose. Appropriations are frequently also limited as to amount, either specified or to be ascertained by reference to some facts.

In addition to the appropriations in particular statutes, there are some general continuing appropriations in the *Financial Administration Act*. Appropriations coming within these provisions need not be repeated in particular Acts. They are as follows:

19. (1) Where money is received by a public officer from any person as a deposit to ensure the doing of any act or thing, the public officer shall hold or dispose of the money in accordance with regulations of the Treasury Board.

(2) Where money is paid by any person to a public officer for any purpose that is not fulfilled the money may, in accordance with regulations of the Treasury Board, be returned or repaid to that person, less such sum as in the opinion of the Board is properly attributable to any service rendered.

(3) Money paid to the credit of the Receiver General and not being public money may be returned or repaid in accordance with regulations of the Treasury Board.

20. (1) Money received by or on behalf of Her Majesty for a special purpose and paid into the Consolidated Revenue Fund may be paid out of the Consolidated Revenue Fund for that purpose, subject to the provisions of any statute applicable thereto.

(2) Subject to any other Act, interest may be allowed and paid from the Consolidated Revenue Fund in respect of money to which subsection (1) applies, in accordance with and at rates fixed by the Minister with the approval of the Governor in Council.

21. Where the Senate or House of Commons, by resolution or pursuant to any rule or standing order, authorizes a refund of public money that was received in respect of any proceedings before Parliament, the Minister may pay the refund out of the Consolidated Revenue Fund.

(a) Specified Amounts

For the relief of unemployment, a sum not exceeding twenty million dollars is hereby appropriated and may be paid out of the Consolidated Revenue Fund of Canada for such purposes and under such terms and conditions as may be approved by the Governor in Council.

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The foregoing is the actual text of a statute enacted in 1930. The purpose of the appropriation is stated, and, in addition, the Governor in Council is authorized to prescribe the terms and conditions. The words *is hereby appropriated* could be omitted as being unnecessary.

The appropriation may be active or passive —

A sum not exceeding twenty million dollars may be paid out of the Consolidated Revenue Fund for the relief of unemployment.

The Minister of Finance may pay twenty million dollars out of the Consolidated Revenue Fund for the relief of unemployment.

Another form is to authorize all expenditures under a statute to be made out of the Consolidated Revenue Fund, followed by a limit.

All payments under this Act may be made out of the Consolidated Revenue Fund, but the aggregate thereof shall not exceed one million dollars (in any fiscal year).

An appropriation in the above form is not self-contained; the purposes, terms and conditions of the payments would be set out in the other provisions of the statute. Other examples of appropriations of specific amounts are:

Grants under this section shall be paid out of the Consolidated Revenue Fund but the aggregate amount thereof shall not exceed twenty million dollars.

The Minister may, subject to and in accordance with the provisions of the *Central Mortgage and Housing Corporation Act*, out of the Consolidated Revenue Fund

- (a) advance money to the Corporation for the purpose of making loans under this Part, and
- (b) reimburse the Corporation
 - (i) for payments made by the Corporation pursuant to section 4, and
 - (ii) for losses sustained in respect of loans made under this Part, or sustained after the 18th day of January, 1945, under the *Dominion Housing Act*, 1935, or *The National Housing Act*, 1938,

but the aggregate of the money advanced to the Corporation under this section and the amounts by which the Corporation is reimbursed under this section shall not exceed five hundred million dollars.

The Minister of Finance shall out of the Consolidated Revenue Fund pay to the Commission the sum of fifty thousand dollars as a fund for the purpose of meeting expenditures incurred by the Commission in carrying out investigations in accordance with section 13

(b) *Limited Unascertained Amounts*

In some appropriations an amount is not specified but the amount is limited by the facts. For example, the expenditures authorized by a pension statute would be limited by the number of persons who are qualified for a pension under the terms of the legislation. The following are some examples:

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The pensions, withdrawal allowances and gratuities payable under this Act shall be paid out of any moneys forming part of the Consolidated Revenue Fund of Canada.

Subject as provided in this Act and in the regulations, there may be paid out of the Consolidated Revenue Fund, in respect of each child resident in Canada maintained by a parent, the following monthly allowance:

Moneys that are payable to Indians or to Indian bands under a treaty between Her Majesty and the band and for the payment of which the Government of Canada is responsible, may be paid out of the Consolidated Revenue Fund.

(c) Limitation by Purpose

In some statutes the appropriation is in general terms and is limited only by a prescribed purpose.

Upon receipt of a certificate of judgment against the Crown issued pursuant to the regulations the Minister of Finance may pay out of the Consolidated Revenue Fund any money awarded by the judgment to any person against the Crown under this Act.

The Minister of Finance may allow and pay out of the Consolidated Revenue Fund to any person entitled by a judgment under this Act to any money or costs, interest thereon at a rate not exceeding four per cent from the date of the judgment until the money or costs are paid.

At the request of the Corporation, the Minister may, out of the Consolidated Revenue Fund, advance to the Corporation on terms and conditions approved by the Governor in Council, such amounts as the Minister considers necessary to enable the Corporation to carry out its rights and obligations under this Act

(d) Loans, Investments, Guarantees, Advances

There are corporations or other bodies that are partially or wholly supported by public funds. Authority to supply the funds out of the Consolidated Revenue Fund is provided in different ways, depending in large measure on the financial structure of the corporation.

10. (1) The Minister of Finance may, out of the Consolidated Revenue Fund, advance to the Corporation any moneys required by it for the purposes of this section.

(2) The aggregate, outstanding at any time, of the amounts advanced by the Minister of Finance to the Corporation under this section shall not exceed one hundred and thirty million dollars.

10. (1) The Corporation may, from time to time, borrow money from Her Majesty or otherwise for the purposes for which it is incorporated.

(2) The Minister of Finance, at the request of the Corporation and with the approval of the Governor in Council, may from time to time out of the Consolidated Revenue Fund lend money to the Corporation on such terms and conditions as the Governor in Council approves, but such loans to the Corporation shall bear interest at a rate that is not less than three and one-quarter per cent per annum.

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(3) The aggregate of the amounts borrowed by the Corporation under subsection (1) and outstanding at any time shall not exceed one hundred and thirty million dollars and the aggregate of the amounts loaned by the Minister of Finance under subsection (2) and outstanding at any time shall not be in excess of that amount.

10. (1) The authorized capital of the Board is three million dollars divided into thirty thousand shares of the par value of one hundred dollars each.

(2) The Minister shall subscribe for the shares of capital stock of the Board, and shall pay the amount of such subscription out of the Consolidated Revenue Fund.

10. (1) The Minister of Finance may from time to time advance to the Minister out of the Consolidated Revenue Fund such sums of money as the Minister may require to enable him

(a) to make loans to bands, groups of Indians or individual Indians for the purchase of farm implements, machinery, livestock, motor vehicles, fishing equipment, seed grain, fencing materials, materials to be used in native handicrafts, any other equipment, and gasoline and other petroleum products, or for the making of repairs or the payment of wages, or

(b) to expend or to lend money for the carrying out of co-operative projects on behalf of Indians.

(2) The total amount of outstanding advances to the Minister under this section shall not at any one time exceed three hundred and fifty thousand dollars.

(e) *Subsidies*

10. (1) The Governor in Council may, as an aid to the construction of any dry dock, authorize the payment out of the Consolidated Revenue Fund of Canada of a subsidy, in accordance with the provisions of this Act, to any incorporated company, approved by the Governor in Council as having the ability to perform the work, that enters into an agreement with Her Majesty to construct a dry dock under the provisions of this Act, with all necessary equipment, machinery and plant, for the reception and repairing of vessels.

(2) No such aid shall be granted unless the Governor in Council is satisfied, upon a report of the Minister, based upon a report of the chief engineer of the Department of Public Works, and such other evidence as he deems necessary, that such dry dock is needed in the public interest, and is, as proposed, of sufficient capacity to meet the public requirements where such dry dock is to be located.

(f) *Special Accounts*

Frequently, a so-called "special account" or "special fund" in the Consolidated Revenue Fund is established for the purpose of regulating expenditures. This is a general authority to pay out money, limited by purpose or amount, or both, and limited also by the state of a special account that is required to be kept.

These special accounts are sometimes regarded as separate funds out of which payments are made, and some statutes are written on that assumption.

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10. (1) There shall be a special account in the Consolidated Revenue Fund to be known as "The National Physical Fitness Fund" to which shall be credited all sums of money that may be appropriated by Parliament for the purposes of this Act, and all sums of money received by way of grant, bequest, donation or otherwise for the purposes of or on behalf of the Council.

(2) Notwithstanding the provisions of the *Financial Administration Act*, the Minister of Finance may, subject to the provisions of this Act, make disbursements from the Fund on the requisition of the Council for the following purposes, or any of them:

- (a) the payment of the salaries of all persons appointed or employed under or pursuant to the provisions of this Act;
- (b) the payment of all sums of money required by the Council for the carrying out of its duties and the exercise of its powers under this Act, together with all necessary expenses in connection therewith;
- (c) such other payments as may be authorized by this Act.

It is not, however, correct to state that there is to be a "special account" in the Consolidated Revenue Fund, "out of which" payments are to be made. There is only one fund, the Consolidated Revenue Fund; any "special fund" must necessarily be part of the Consolidated Revenue Fund, and a payment out of a "special fund" is in reality a payment out of the Consolidated Revenue Fund. The "special account" is a record of payments out of the Consolidated Revenue Fund for certain specified purposes; the appropriation is an authority to pay out of the Consolidated Revenue Fund, but limited by the state of the account.

10. (1) There shall be a special account in the Consolidated Revenue Fund, to be known as the National Capital Fund, to which shall be credited

- (a) the amounts appropriated by Parliament for the purposes of the Fund; and
- (b) the balance standing to the credit, at the coming into force of this Act, of the National Capital Fund established pursuant to *The Appropriation Act, No. 4, 1947-48*.

(2) Subject to subsection (3), the Minister of Finance may, on the recommendation of the Minister out of the Consolidated Revenue Fund, pay to the Commission such amounts as are from time to time required by the Commission to finance the cost of capital projects approved by the Governor in Council.

(3) The amounts paid by the Minister of Finance to the Commission under subsection (2) shall be charged to the Fund, but a payment out of the Consolidated Revenue Fund under subsection (2) shall not exceed the balance standing to the credit of the Fund.

5. There shall be established in the Consolidated Revenue Fund an account, to be known as the Fire Losses Replacement Account, and every advance out of the Consolidated Revenue Fund under section 4 shall in the first instance be entered as a charge against the Account.

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6. If, during the fiscal year in which an advance for an expenditure was made under section 4, an appropriation is available for the expenditure, the amount of the advance may be charged against that appropriation, and when so charged shall be deleted from the charges against the Account.

7. (1) All advances in a fiscal year for expenditures under section 4 not charged against appropriations for that fiscal year shall be included in Estimates for the following fiscal year submitted by the appropriate Ministers to the Governor in Council.

Any advance for an expenditure under section 4 not charged against an appropriation during the fiscal year in which the advance was made, may be charged against any subsequent appropriation available for that purpose, and an expenditure so charged shall be deleted from the charges against the Account.

(g) *Revolving Funds*

An expenditure scheme known as a “revolving fund” is a special account with the additional feature that revenues arising out of the statute may be expended without further authority from Parliament.

10. (1) Subject to this Part, there may be advanced out of the Consolidated Revenue Fund

- (a) such amounts as are required for the purposes of paragraphs 47(4)(a), (b) and (c);
- (b) an amount in respect of any contract entered into under section 48 equal to the cost to the Director of the dwelling to which that contract relates; and
- (c) such amounts contemplated by paragraphs 53(2) (b) and (c) as the Director is required to expend in the event of the termination by him of any contract entered into under section 48.

(2) There shall be established in the Consolidated Revenue Fund an account to be known as the Veterans' Land Act Housing Account, and every advance out of the Consolidated Revenue Fund made pursuant to subsection (1) shall in the first instance be entered as a charge against that account.

(3) There shall be shown as credits in the said account

- (a) all amounts received by the Director under subsection 47(2), to the extent that the amount so received in any case does not exceed the cost to the Director of the land in that case;
- (b) all amounts received by the Director under any sale, grant or other disposition made by him under paragraph 47(4)(d);
- (c) such amounts mentioned in paragraph 51(1) (a) as are received by the Director from the Corporation or an approved lender;
- (d) such amounts mentioned in paragraphs 53(2)(a), (b) and (c) as are retained by the Director out of the proceeds of any sale made by the Director under subsection (1) of that section; and

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(e) such amounts as are charged by the Director under subsection 56(2) to the Insurance Account established under that section.

(4) No advance under subsection (1) shall exceed fifteen million dollars less the aggregate of all amounts then standing as a charge against the said accounts.

10. There shall be a fund, called the Unemployment Insurance Fund, for the account of which there shall be credited in the Consolidated Revenue Fund,

- (a) the contributions made under this Act on behalf of insured persons;
- (b) the contributions made under this Act by employers of insured persons;
- (c) an amount equal to one-fifth of each of the amounts mentioned in paragraphs (a) and (b) at the time those amounts are credited; and
- (d) the amounts paid under paragraph 43(1) (h) and sections 102 and 103.

11. (1) Subject to this Act, the Minister of Finance may, notwithstanding anything in the *Financial Administration Act*, on the requisition of the Commission or its authorized officers, pay out of the Consolidated Revenue Fund benefits and refunds of contributions as provided by this Act and the costs of the operations under section 86.

(2) All payments made out of the Consolidated Revenue Fund under subsection (1) plus an amount equal to one-fifth of the refunds of contributions, shall be charged to the Unemployment Insurance Fund.

(3) No payment shall be made out of the Consolidated Revenue Fund under this section in excess of the amounts standing to the credit of the Unemployment Insurance Fund in the Consolidated Revenue Fund.

10. (1) There shall be a special account in the Consolidated Revenue Fund called the National Gallery Purchase Account to which shall be credited any money appropriated by Parliament in any fiscal year for the purpose of acquiring works of art, and any expenditure for the acquisition of works of art in that or any subsequent fiscal year, including any costs in connection therewith, may be paid out of the moneys so appropriated and credited.

(2) There shall be a special account in the Consolidated Revenue Fund called the National Gallery Special Operating Account to which shall be credited all money received by the Board by way of donation, bequest, revenue or otherwise.

(3) Any expenditures for the purposes of this Act may be paid out of the National Gallery Special Operating Account or out of money appropriated by Parliament for such purposes.

5. (1) There shall be established in the Consolidated Revenue Fund an Account to be known as the Marine and Aviation War Risks Insurance Account to which shall be credited

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- (a) amounts equal to the premiums and other moneys received for or arising out of agreements for insurance or reinsurance entered into under this Act;
- (b) all sums that are allocated to the Account from appropriations by Parliament; and
- (c) amounts directed to be credited to the Account by the Minister under section 6.

(2) All payments of losses, costs, return of premiums or other moneys payable by the Minister under or arising out of agreements for insurance or reinsurance entered into under this Act and any other costs or expenses incurred in the administration of this Act shall be paid out of the Consolidated Revenue Fund.

(3) All money paid out of the Consolidated Revenue Fund under subsection (2) and all amounts directed to be charged to the Account by the Minister under section 6 shall be charged to the Account.

6. Where the Minister is of opinion that the aggregate amount to the credit of the Account is or will be less than the aggregate amount required to pay the amounts charged or to be charged to the Account, he may from time to time direct that amounts be credited to the Account and at such times as he deems advisable direct that the amounts so previously credited be charged to the Account.

10. (1) Subject to this section, all moneys required for the buying, storing, transporting or processing of agricultural products under subsection 4(1) may be paid out of the Consolidated Revenue Fund.

(2) There shall be established in the Consolidated Revenue Fund an account to be known as the Agricultural Products Board Account to which shall be credited all moneys received from any transaction respecting agricultural products under subsection 4(1) and to which shall be charged all moneys paid out of the Consolidated Revenue Fund pursuant to subsection (1).

(3) A payment made out of the Consolidated Revenue Fund under subsection (1) shall not be greater than the amount by which fifteen million dollars exceeds the balance of the Agricultural Products Board Account.

(4) For the purposes of subsection (3), "balance of the Agricultural Products Board Account" means the aggregate of all payments charged to the Account minus the aggregate of all amounts credited the Account.

(5) All expenditures for the purposes of this Act, other than those required for the buying, storing, transporting or processing of agricultural products, shall be paid out of moneys appropriated by Parliament.

10. (1) An Account shall be established in the Consolidated Revenue Fund for the purposes of this Act to be known as the National Film Board Operating Account.

(2) All expenditures made by the Board, other than expenditures for the acquisition of capital equipment for the Board's own use, shall be shown as expenditures in the Account.

(3) There shall be shown as receipts in the Account

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- (a) all moneys received by the Receiver General in respect of operations of the Board,
- (b) amounts transferred from appropriations made by Parliament for the operations of the Board, in respect of expenditures that have been incurred in operations of the Board for which the moneys were appropriated, and
- (c) amounts transferred from appropriations for expenditure by other departments for film activities, in respect of expenditures that have been incurred by the Board for films undertaken by the Board for those departments.

(4) The expenditures made by the Board and shown in the Accounts shall not at any time exceed the receipts shown in the Account by more than seven hundred thousand dollars or such lesser amount as may be fixed by the Treasury Board.

(5) At the end of each fiscal year the value of the inventory of the Board shall be determined in accordance with regulations to be made by the Governor in Council, and if such value, added to the receipts shown in the Account, exceeds the total of expenditures shown in the Account and liabilities in respect of operations of the Board then due and payable, an amount equal to the excess shall be transferred to the Consolidated Revenue Fund as revenue, but if the value is less no amount may be credited to the Account to meet the deficiency except pursuant to an appropriation by Parliament for that purpose.

CHAPTER IV

PENAL PROVISIONS

1. Offences and Punishments

(a) General Considerations

Offences are of two kinds, indictable and non-indictable, the latter being known as summary conviction offences. The difference is largely procedural, although summary conviction offences usually carry a lesser punishment. A statute creating an offence should specify whether it is indictable or punishable on summary conviction. Occasionally an offence is created punishable either way, at the option of the prosecuting authority.

A penal provision has two ingredients, namely, a prohibited course of conduct and a sanction. There must be both an offence and punishment, and there are different methods of expressing them.

Some penal provisions expressly demand or prohibit a course of conduct. Thus, they may provide that every person to whom they apply shall do a certain thing, or, negatively, that no person shall do a certain thing. Such a provision is not complete in itself, for although a course of conduct has been prohibited, there is no punishment. It is, therefore, necessary to add a further provision to the effect that every person who violates the Act or section, as the case may be, is guilty of an offence and is liable upon conviction to a stated punishment.

This is the form commonly used in regulatory Acts and in subordinate legislation. The verb may take various forms. It could, for example, be *violate* or *contravene*, or *fail to comply with*, depending upon the terms of the statute creating the offence.

In some cases penal provisions take the form of a description of a person by reference to a course of conduct. It is not a direct command or prohibition; rather, it is a definition of a crime. This can be done in various ways, as follows:

By means of a subject modifier

Every person who makes a false statement is guilty of an offence (commits an offence)

By means of a predicate modifier

If any person makes a false statement he is guilty of an offence

Or partly in the predicate and partly in the subject

Every person who makes a false statement is guilty of an offence unless he reasonably believed it to be true

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This is the form commonly used in penal codes. The purpose of the provision is to define a crime, rather than to supply enforcement machinery for some regulatory provision. The one provision includes both the offence and the punishment. The punishment attached to an offence is usually fine or imprisonment or both. Sometimes there is also a forfeiture, and sometimes also a “penalty”, recoverable by civil suit or imposed in addition to a fine. To avoid confusion a fine should not be called a penalty.

Offences can also be described directly

It is an offence to make a false statement

Making a false statement is an offence

Both these forms are less desirable because they do not directly identify the offender.

Sometimes the offence is set out in the subordinate legislation and the penalty in the statute. Sometimes an Act provides that every person who violates a regulation made under the Act is liable to a certain penalty. The regulations then prescribe the desired course of conduct.

In other cases the Act may authorize the regulation-making authority to prescribe the penalties for failure to comply with the regulations; in that event the regulations must do just that, and must not attempt to define crimes. The regulation should, for example, provide that

Every person who violates any of these regulations is liable to a fine of fifty dollars.

and should not state that

Every person who violates any of these regulations *is guilty of an offence* and is liable to a fine of fifty dollars.

Difficulties may arise where subsidiary orders are made by regulation. Suppose that the statute authorizes a Minister to make regulations, and also prescribes the penalty for breach of a regulation; and that a regulation is then made authorizing a subordinate official to issue directions. How can the directions be enforced? The statute supplies the penalty for breach of a regulation, but not of a direction; and the Minister has no authority to prescribe any penalties. This problem can be met by inserting another regulation to the effect that every person to whom a direction is issued shall comply with it. Failure to comply with a direction then constitutes a breach of a regulation, and the Act supplies the penalty.

(b) *Nature of Offence*

As indicated above, there are two classes of offences — indictable and summary conviction. The statute should always specify the class of offence. Thus,

Every person who violates this Act is guilty of an *indictable* offence and is liable to...etc.

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Every person who violates this Act is guilty of an offence and is liable on *summary conviction* to...etc.

The *Criminal Code* contains the procedural provisions applicable to indictment and summary conviction. Although the foregoing forms state that the offender is “guilty of an offence” he is, of course, not subject to punishment until convicted thereof.

(c) *Punishment*

The statement of the offence is usually followed by a statement of the punishment, which usually takes the form of a fine, a term of imprisonment, or both. The punishment for indictable offences is usually heavier than for summary conviction offences.

A forfeiture may also be imposed as a punishment. Pecuniary penalties may also be prescribed, but they differ from fines in that they are recoverable by civil rather than criminal proceedings. It follows that a pecuniary punishment enforceable by criminal proceedings should be called a “fine” and not a “penalty”.

An offence may be punishable either by indictment or summary conviction proceedings, at the option of the prosecuting authorities.

Every person who violates this Act is guilty of an offence and is liable

(a) on conviction upon indictment, to a fine...etc., or

(b) on summary conviction to a fine...etc.

It is not necessary to provide for payment of the costs of prosecution by a convicted person, or that imprisonment may be imposed in default of payment of a fine; the *Criminal Code* so provides.

2. Criminal Code Provisions

The *Criminal Code* contains a number of provisions that are applicable to offences and punishments under other statutes. Unless some variation is intended it is not necessary to provide for the matters that are set out in the *Criminal Code*.

(a) *Offences*

(i) Punishment only after conviction

Subsection 5(1) of the *Criminal Code* provides:

5. (1) Where an enactment creates an offence and authorizes a punishment to be imposed in respect thereof,

(a) a person shall be deemed not to be guilty of that offence until he is convicted thereof; and

(b) a person who is convicted of that offence is not liable to any punishment in respect thereof other than the punishment prescribed by this Act or by the enactment that creates the offence.

In describing an offence, therefore, it may be said that every person who does or omits to do some thing is guilty of an offence. It is understood that a person is not actually *guilty* until he has been convicted.

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(ii) Extra-territorial offences

Subsection 5(2) of the *Criminal Code* provides:

- (2) Subject to this Act or any other Act of the Parliament of Canada, no person shall be convicted in Canada for an offence committed outside of Canada.

If it is intended to make punishable an act committed outside Canada express provision to that effect must be made.

(iii) Punishable under two or more Acts

Section 11 of the *Criminal Code* provides:

11. Where an act or omission is an offence under more than one Act of the Parliament of Canada, whether punishable by indictment or on summary conviction, a person who does the act or makes the omission is, unless a contrary intention appears, subject to proceedings under any of those Acts, but is not liable to be punished more than once for the same offence.

(iv) Parties to offence

Sections 21 to 23 of the *Criminal Code* provide:

21. (1) Every one is a party to an offence who

- (a) actually commits it,
(b) does or omits to do anything for the purpose of aiding any person to commit it, or
(c) abets any person in committing it.

- (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

22. (1) Where a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled or procured is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled or procured.

- (2) Every one who counsels or procures another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling or procuring that the person who counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring.

23. (1) An accessory after the fact to an offence is one who, knowing that a person has been a party to the offence, receives, comforts or assists him for the purpose of enabling him to escape.

- (2) No married person whose spouse has been a party to an offence is an accessory after the fact to that offence by receiving, comforting or assisting the spouse for the purpose of enabling the spouse to escape.

- (3) No married woman whose husband has been a party to an offence is an accessory after the fact to that offence by receiving, comforting or assisting in his presence and by his authority any other person who has been

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a party to that offence for the purpose of enabling her husband or that other person to escape.

These provisions are applicable to all offences and not merely to those established by the *Criminal Code*.

(v) Conspiracies and attempts

Section 421 of the *Criminal Code* provides:

421. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences, namely,

- (a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, upon conviction, an accused is liable to be sentenced to death or to imprisonment for life, is guilty of an indictable offence and is liable to imprisonment for fourteen years;
- (b) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, upon conviction, an accused is liable to imprisonment for fourteen years or less, is guilty of an indictable offence and is liable to imprisonment for a term that is one-half of the longest term to which a person who is guilty of that offence is liable; and
- (c) every one who attempts to commit or is an accessory after the fact to the commission of an offence punishable on summary conviction is guilty of an offence punishable on summary conviction.

(b) Punishments

(i) Summary conviction offences

Section 722(1) of the *Criminal Code* provides:

722. (1) Except where otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

A statement in the *Criminal Code* or in some other statute that an act is an offence punishable on summary conviction will carry with it the foregoing punishment. However, in drafting penal provisions for other statutes, whether the punishment is the same or not, it is common practice to state the punishment.

It is unnecessary to state that imprisonment may be ordered in default of payment of the fine. Section 722(2) of the *Criminal Code* provides

(2) Where the imposition of a fine or the making of an order for the payment of money is authorized by law, but the law does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than six months.

The *Criminal Code*, also provides for payment of costs as follows:

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744. (1) The summary conviction court may in its discretion award and order such costs as it considers reasonable and not inconsistent with such of the fees established by section 772 as may be taken or allowed in proceedings before that summary conviction court to be paid

- (a) to the informant by the defendant, where the summary conviction court convicts or makes an order against the defendant, or
- (b) to the defendant by the informant, where the summary conviction court dismisses an information.

(2) An order under subsection (1) shall be set out in the conviction, order or order of dismissal, as the case may be.

(3) Where a fine or sum of money or both are adjudged to be paid by a defendant, and a term of imprisonment in default of payment is imposed, the defendant is, in default of payment, liable to serve the term of imprisonment imposed, and for the purposes of this subsection, any costs that are awarded against the defendant shall be deemed to be part of the fine or sum of money adjudged to be paid.

(4) Where no fine or sum of money is adjudged to be paid by a defendant, but costs are awarded against the defendant or informant, the person who is liable to pay them is, in default of payment, liable to imprisonment for one month.

(5) In this section, “costs” includes the costs and charges, after they have been ascertained, of committing and conveying to prison the person against whom costs have been awarded.

(ii) Indictable offences

Section 646 of the *Criminal Code* lays down general rules for all indictable offences.

646. (1) An accused who is convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any other punishment that is authorized, but an accused shall not be fined in lieu of imprisonment where the offence of which he is convicted is punishable by a minimum term of imprisonment.

(2) An accused who is convicted of an indictable offence punishable with imprisonment for more than five years may be fined in addition to, but not in lieu of, any other punishment that is authorized.

(3) Where a fine is imposed under this section, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

- (a) two years, where the term of imprisonment that may be imposed for the offence is less than five years, or
- (b) five years, where the term of imprisonment that may be imposed for the offence is five years or more.

It is, therefore, unnecessary to make provision for the foregoing matters in other statutes establishing indictable offences.

(iii) Summary conviction and indictable offences.

Other provisions of the *Criminal Code* relate to both classes of offences.

645. (1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to

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the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

(3) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribed the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of imprisonment that is prescribed in respect of the offence.

(4) Where an accused

- (a) is convicted while under sentence for an offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;
- (b) is convicted of an offence punishable with both fine and imprisonment, and both are imposed with a direction that, in default of payment of the fine, the accused shall be imprisoned for a term certain; or
- (c) is convicted of more offences than one before the same court at the same sittings, and
 - (i) more than one fine is imposed with a direction in respect of each of them that, in default of payment thereof, the accused shall be imprisoned for a term certain,
 - (ii) terms of imprisonment for the respective offences are imposed, or
 - (iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence with a direction that, in default of payment, the accused shall be imprisoned for a term certain,

the court that convicts the accused may direct that the terms of imprisonment shall be served one after the other.

647. Notwithstanding subsection 645(2), a corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence,

- (a) to be fined in an amount that is in the discretion of the court, where the offence is an indictable offence, or
- (b) to be fined in an amount not exceeding one thousand dollars, where the offence is a summary conviction offence.

648. Where a fine that is imposed on a corporation is not paid forthwith the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in the superior court of the province in which the trial was held, and that judgment is enforceable against the corporation in the same manner as if it were a judgment rendered against the corporation in that court in civil proceedings.

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(iv) General punishment

Section 115 of the *Criminal Code* provides:

115. Every one who, without lawful excuse, contravenes an Act of the Parliament of Canada by wilfully doing anything that it forbids or by wilfully omitting to do anything that it requires to be done is, unless some penalty or punishment is expressly provided by law, guilty of an indictable offence and is liable to imprisonment for two years.

The foregoing section may be resorted to where a statute does not create an offence for breach thereof.

(c) Prosecutions

Time for prosecution in summary conviction cases is limited by section 721 of the *Criminal Code* as follows:

721. (1) Except where otherwise provided by law, this Part applies to proceedings as defined in this Part.

(2) No proceedings shall be instituted more than six months after the time when the subject-matter of the proceedings arose.

There is no limit for indictable offences, except in a few specific instances. If a limit is intended, it must be inserted.

3. General Offences

(a) Breach of Act or provision thereof

Every person who violates this (section) Act is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months or to both.

Every person who violates any provision of this Act is guilty of an offence.

Every person who fails to comply with the provisions of this Act...

Every person who contravenes or fails to comply with...

Every person who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act is guilty of an offence.

Every person who violates any provision of this Act for which violation no punishment is prescribed elsewhere in this Act is guilty of an offence.

Every person who violates any provision of this Act is guilty of an offence, and if no punishment is prescribed therefor in any other section of this Act, is liable...etc.

(b) Breach of Act or Regulation

Every person who violates this Act or the regulations is guilty of an offence...

Every person who violates any provision of this Act or the regulations...

Every person who violates any of the provisions of this Act, or of any regulation, or refuses or neglects to perform any duty imposed by this Act or a regulation, for which violation no penalty is specifically herein provided, is liable to a fine of not less than twenty-five dollars and not more than one hundred dollars.

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Every person who is guilty of an offence against any provision of this Act or any regulation made by the Governor in Council or the Minister for which a penalty is not provided elsewhere in this Act or the regulations, is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

4. First and Subsequent Offences

Any dealer who violates any of the provisions of Part I or the regulations thereunder is liable upon summary conviction, for a first offence, to a fine of not less than five dollars and not more than one hundred dollars, and for each subsequent offence to a fine of not less than fifty dollars and not more than five hundred dollars.

Everyone who has in his possession any brewing apparatus, contrary to the provisions of this Act, is liable for a first offence to a fine not exceeding one hundred dollars and not less than twenty-five dollars, and for each subsequent offence, to a fine not exceeding two hundred and fifty dollars, and not less than one hundred and fifty dollars.

Every corporation that authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, is liable, on summary conviction before two justices of the peace, for the first offence, to a fine not exceeding two hundred and fifty dollars and not less than fifty dollars, and, for each subsequent offence, to a fine not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence.

Every person who violates any provision of this Act or any regulation for which a penalty has not been provided, is guilty of an offence and is, for the first offence, liable on summary conviction to a fine not exceeding two hundred dollars and, for each subsequent offence, is liable on summary conviction to a fine not exceeding five hundred dollars.

Every person who contravenes any of the provisions of these Regulations is guilty of an offence, and unless some penalty is expressly provided by these Regulations for such contravention, is liable on summary conviction for a first offence if an individual to a fine of not more than five hundred dollars or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment, and if a corporation to a fine of not more than two thousand five hundred dollars, and for any subsequent offence if an individual to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment and if a corporation to a fine of not more than five thousand dollars.

5. Corporations

The directors of any company incorporated in Canada are jointly and severally liable for any offence against this Act by such company or by any of its officers.

Where a person guilty of an offence under subsection (2) is a corporation, every person who at the time of the commission of the offence was a director or officer of the corporation is guilty of the like offence unless he proves that

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the act or commission constituting the offence took place without his knowledge or consent, or that he exercised all due diligence to prevent the commission of such offence.

Where a corporation is guilty of an offence under this Act, any officer, director or agent of the Corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence.

Where an offence against this Act has been committed by a corporation, every officer, director or agent of the corporation who directed, authorized, condoned or participated in the commission of the offence is liable to the like penalties as the corporation and as if he had committed the like offence personally.

In case any corporation is guilty of a breach of any provision of this Act or of any order or regulation, every officer or servant of such corporation responsible for such breach is liable on summary conviction to a fine not exceeding one hundred dollars and in default of payment thereof to imprisonment for one month.

Where an offence under this Act or the regulations has been committed by a corporation and whether or not the corporation has been prosecuted or convicted, every person who at the time of the commission of the offence was a director or officer of the corporation is guilty of the like offence and is liable on conviction to the punishment provided for the offence upon proof that the act or omission constituting the offence took place with his knowledge or consent, or that he failed to exercise due diligence to prevent the commission of such offence.

Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

6. Breach of Orders or Directions

If any person to whom any order or direction is issued or who is required to do or abstain from doing anything by or pursuant to this Act fails to obey such order or directions or to do or abstain from doing such thing he is guilty of an offence under this Act.

Every person to whom an order is issued or who is required to do or abstain from doing anything by or pursuant to these regulations shall obey such order or do or abstain from doing such thing as required.

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7. Punishments

(a) *Additional Punishment*

Where any person is convicted of an offence under this section, there shall be imposed on him, in addition to any fine, a penalty equal to such amount of the farm improvement loan made to him in respect of which such offence was committed as has not been repaid by him, with interest thereon to the date of such conviction, and such penalty shall be paid to the bank by which such loan was made, or if payment has been made by the Minister to the bank in respect of such loan under this Act, such penalty shall be paid to the Receiver General of Canada, and payment of such penalty shall discharge the liability of such person to repay such loan.

In addition to any other penalties prescribed for a violation of section 168, any person holding a licence to carry on the business or trade of a distiller or brewer, issued under the provisions of the *Excise Act*, who violates the provisions of the said section, or who sells or delivers intoxicating liquor in violation of the law in force in any province, is also liable in any prosecution under this Part, or under such provincial law, on conviction for a third offence, to forfeit his licence and shall thereafter be unable to hold such a licence.

Any employer who contravenes or fails to comply with the provisions of section 5 or section 11, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars, and, in addition, the court shall order him to pay to the person whom he has failed to reinstate, or whose employment he has terminated, a sum not exceeding an amount equal to twelve weeks' remuneration at the rate at which he was being remunerated by that employer when he was accepted for service in His Majesty's forces.

Everyone who becomes liable to the penalty provided for in subsection (1), shall, in addition thereto, forfeit and pay for the use of Her Majesty, double the amount of excise duty and licence fee which should have been paid by him under this Act.

There shall be imposed on every person convicted of an offence under subsection (1), in addition to the penalty provided therein, an additional penalty equal to whatever portion of the benefit or payment obtained as a result of the false statement or misrepresentation remains unrepaid to or unrecovered by the Commission at the time of conviction.

(b) *Minimum Punishments*

Notwithstanding the *Criminal Code* or any other statute or law in force at the commencement of this Act, the court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act and the court has no power to suspend sentence.

Notwithstanding the provisions of the *Criminal Code*, or of any other statute or law, the court has no power to impose less than the minimum penalties herein prescribed, and shall, in all cases of conviction, impose both fine and imprisonment;

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8. Specific Offences

(a) *Advertisements*

- (1) No person shall, anywhere in Canada,
 - (a) publish an advertisement of any spirits, wine or beer;
 - (b) publish an advertisement of himself as a distiller, manufacturer or brewer of spirits, wine or beer or as a person who sells spirits, wine or beer; or
 - (c) publish an advertisement of any person as a distiller, manufacturer or brewer of spirits, wine or beer or as a person who sells spirits, wine or beer.
- (2) No person lawfully manufacturing spirits, wine or beer is, by reason of subsection (1), prohibited from publishing on the container of spirits, wine or beer manufactured by him information with regard thereto and with regard to himself as manufacturer thereof.
- (3) No person lawfully selling spirits, wine or beer is, by reason of subsection (1) of this section, prohibited from publishing information regarding such spirits, wine or beer in the place where it may lawfully be sold.
- (4) No person is, by reason of subsection (1), prohibited from selling or distributing in Canada, in the ordinary course of his business, books, newspapers or magazines lawfully imported into Canada.

(b) *Aiding and Abetting*

...knowingly induces, aids or abets or attempts to induce, aid or abet any person to violate a provision of this Act or the regulations or to commit an offence under this Act or the regulations.

No person shall by means of a written or printed communication, publication or article, or by an oral communication or by public speech or utterance

- (a) counsel or advise any other person not to comply with any of the provisions of these Regulations or of a notice or order given or made pursuant thereto, or
- (b) wilfully resist or impede, or attempt wilfully to resist or impede, or persuade or induce or attempt to persuade or induce any person or group or class of persons to resist or impede the operation or enforcement of these Regulations.

No person shall in any manner impede or prevent or attempt to impede or prevent any other person in the performance of his duties under these Regulations.

(c) *Books and Records*

Everyone carrying on any business subject to excise, who fails or neglects, or allows any person acting for him or in his employ, to fail or neglect to keep books as are required to be kept by this Act, or by any regulation made in that behalf, or to make true and correct entries therein of all particulars required by this Act to be entered in such books, and every person carrying on any business subject to excise who

- (a) in any way alters or falsifies any such entries, or makes, or causes or allows to be made any untrue entry or entries in the said books;

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- (b) removes, or causes or permits the removal from the said books of any leaf or leaves or part of a leaf or leaves;
- (c) defaces or erases, or causes or permits to be defaced or erased, any entry made therein;
- (d) neglects or refuses to prepare and deliver any inventory to make any return or statement, or to give any information, or to render any accounts required by this Act;
- (e) falsifies any such return, inventory statement or account, or knowingly gives false information; or
- (f) neglects or refuses to produce any book, account, statement or return by this Act required to be kept, or any private books or accounts that are demanded for the inspection of any duly authorized officer, when required to so do during ordinary business hours;

is guilty of an indictable offence and is liable, for a first offence, to a fine not exceeding three hundred dollars and not less than fifty dollars, and for each subsequent offence to a fine of five hundred dollars, together with a further penalty equal to double the amount of licence fees, duty or other impost payable under this Act by such person at the time of such offence on any spirits, malt, beer, manufactured tobacco, cigars, stock, goods manufactured in bond, or materials for manufacturing them.

Every person who

- (a) destroys, alters or mutilates records or books of account kept in respect of any period pursuant to subsection (1) to evade paying a tax or otherwise to evade compliance with this Act or to assist any other person to evade paying a tax or otherwise to evade compliance with this Act, or
- (b) makes, or assents or acquiesces in the making of false or deceptive entries, or omits or assents or acquiesces in the omission, to enter a material particular in books or records of account required to be kept in respect of any period by subsection (1),

is guilty of an offence and liable on summary conviction to a fine of not less than one hundred dollars and not more than one thousand dollars and to a further penalty equal to double the amount of the taxes that should have been paid or collected or the amount of stamps that should have been affixed or cancelled, as the case may be, in respect of such period, and in default of payment of the said fine and penalties, to imprisonment for a term of not less than three months and not more than twelve months.

Every contractor who fails to keep the records required by this Act, or who fails to allow an inspector to examine such records and to take such extracts therefrom as he may deem necessary, is liable to a fine of not less than five dollars and not more than fifty dollars.

No person shall, with intent to evade any of the provisions of this Act, destroy, alter, mutilate or secrete any records or books of account or make or counsel or procure the making of any false or fraudulent entries in those records or books, or omit or concur in omitting to enter any material particular in records or books of account.

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No person shall, with intent to evade any regulation, order or requirement, destroy, mutilate, deface, alter, secrete, or remove any books of account, records of business or similar property of any kind.

No person shall obstruct, deceive or mislead the corporation or any officer of customs or excise or any police officer or any employee or agent of the corporation or any other person concerned in the administration of any regulation, order, or requirement with reference to any matter affected by such regulation, order or requirement.

(d) *Bribery*

Every person who gives, offers or promises to give, or procures to be given, any bribe, recompense or reward to, or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or to conceal or connive at any act whereby the provisions of this Act, or any law relating to the customs, trade or navigation, may be evaded, is guilty of an indictable offence and liable for every such offence to a fine of one thousand dollars, and to imprisonment for a term not exceeding five years and not less than one year.

The provisions of the *Criminal Code* respecting bribery and corruption of officials or employees of the Government extend to all inspectors and other persons appointed to carry out the provisions of this Act.

Where an inspector accepts from the bankrupt or from any person, firm or corporation on his behalf or from the trustee, any fee, commission or emolument of any kind other than or in addition to the regular fees provided for by this Act, he is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

Every person is guilty of an indictable offence who corruptly,

- (a) makes an offer, proposal, gift, loan or promise or gives or offers any compensation or consideration, directly or indirectly, to a member of any Board, an examining physician, or an officer or person concerned in the administration of these Regulations or having any duties to perform thereunder on account of any postponement order or certificate of physical or medical unfitness already issued or in order to obtain for himself or any other person such postponement order or certificate of physical or medical unfitness; or,
- (b) being a member of any Board, an examining physician or an officer or person concerned in the administration of these Regulations having any duties to perform thereunder, accepts or agrees to accept or allows to be accepted by any person under his control or for his benefit any such offer, proposal, gift, loan, promise, compensation or consideration.

Every person is guilty of an indictable offence and liable to a fine not exceeding five thousand dollars and not less than five hundred dollars or to imprisonment for a term not exceeding five years and not less than six months or to both such fine and such imprisonment, who corruptly

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- (a) makes any offer, proposal, gift, loan or promise or gives or offers any compensation or consideration, directly or indirectly to a person concerned in the administration or enforcement of these Regulations or having any duties to perform thereunder, for the purpose of influencing such person in the performance of his duties; or
- (b) being a person concerned in the administration or enforcement of these Regulations or having any duties to perform thereunder, accepts or allows to be accepted by any person under his control or for his benefit any such offer, proposal, gift, loan, promise, compensation or consideration.

...bribes or attempts to bribe, or make any offer, proposal, gift, loan or promise, or gives or offers any compensation or consideration directly or indirectly, to induce any inspector or other official to issue any irregular or untrue certificate in connection with any live stock or live stock product or to refrain from performing any of his duties as required by the Act and regulations;

(e) *Concealment*

Every person who harbours or conceals any one afflicted with leprosy, knowing or having reason to suspect or believe that he is so afflicted, with intent to prevent the person so harboured or concealed from being examined under direction of the Minister, or to prevent his being apprehended under this Act, is guilty of an offence and is liable to a fine not exceeding one hundred dollars and not less than ten dollars, or to imprisonment for a period not exceeding six months and not less than one month, with or without hard labour, or to both.

(f) *Dealing in Articles*

No person shall import into or have in possession within Canada or buy, sell, ship or otherwise dispose of any fur seal skin, except skins taken and officially marked and certified as provided in paragraph 7(b), and except skins that have been dressed and dyed, unless a fishery officer or other officer authorized by the Minister of Fisheries had, with respect to such skin, issued a certificate in the form set forth in Schedule B and the person taking such skin has duly completed and signed the statement prescribed in such form and such skin is marked with a tag affixed thereto by such officer bearing the number designated in such certificate.

(g) *Destruction*

Every person who, knowingly and wilfully, pulls down, alters, defaces or removes any monument erected, planted or placed by a surveyor in carrying out his duties under this Act is guilty of an offence and is liable

- (a) on summary conviction, to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment; or
- (b) on conviction under indictment, to imprisonment for a term not exceeding seven years.

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(h) *Fees*

(1) No person, firm or corporation is entitled to charge or to collect as against or from any other person, firm or corporation any fee or commission or advance of price for services rendered in the sale of any land made to the Director, whether for the finding or introducing of a buyer or otherwise.

(2) No person, firm or corporation shall pay to any other person, firm or corporation any such fee or commission or advance of price for any such service.

(3) The Director may decline to purchase land for the purposes of this Act where it appears that the owner acquired the land for speculative purposes subsequent to the 10th day of September, 1939.

It is an offence for any person to charge or collect or to attempt to charge or collect, either directly or indirectly, any fee or other compensation for assisting in any manner a member of the forces or his dependant in obtaining any of the benefits to which he is entitled under this Act, punishable upon summary conviction by a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding one year, or by both such fine and such imprisonment. Any person who collects or attempts to collect any fees or charges for services rendered with respect to any application for a pension, the amount of which fees or charges has not been approved as hereinbefore provided, is guilty of an indictable offence, and is liable to imprisonment for a period not exceeding six months, or to a fine not exceeding five hundred dollars, or to both.

(i) *False Information, returns, etc.*

Every person who

- (a) knowingly furnishes any false information pursuant to any requirement to furnish information or to make any report under any order made pursuant to these Regulations; or
- (b) contravenes or omits to comply with these Regulations or any order made pursuant to these Regulations

is guilty of an offence.

Any person who knowingly makes any statement or gives any information that is false in any material particular for the purpose of having made available any credit to him or on his behalf is guilty of an offence.

Every person who in relation to the purposes of this Act and knowing it to be false

- (a) makes any false representation;
- (b) makes or causes to be made any false entry in any register or book;
- (c) makes or causes to be made any false document or alters the form of a copy of any document; or
- (d) produces or tenders any document containing false information

is guilty of an indictable offence and is liable upon conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months, or to both.

(1) Every person is guilty of an offence under this Act and liable on summary conviction to a fine not exceeding one hundred dollars, who

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- (a) violates or fails to comply with any provision of this Act or of any regulations;
- (b) in respect to any information or return required by regulation, submits false information or makes a false return thereto; or
- (c) falsely claims to be entitled to any payment under this Act.

(2) No award shall be made to any farmer who submits any such false information to the Minister or makes any such false return.

Every director, officer or auditor of the Corporation who verifies or who has to do with the delivering or transmitting to the Minister of any statement, account, or return required to be furnished to the Minister pursuant to this Part and who knows the said statement, account or return to be false in any material particular, is guilty of an indictable offence and liable to imprisonment for not more than five years and not less than six months.

Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement

- (a) in any application for insurance under this Act, or
- (b) in any instrument given to the Corporation under the authority of this Act.

Where a creditor, or a person claiming to be a creditor, in any proceedings under this Act, wilfully and with intent to defraud, makes any false claim or any proof, declaration or statement of account, that is untrue in any material particular, he is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

Any person who makes in an application a statement that is false in any material respect, or who uses the proceeds of a guaranteed loan for a purpose other than that stated in his application, is guilty of an offence under this section, and is liable on summary conviction to a fine of not more than five hundred dollars.

No person shall make any false statement or representation for the purpose of obtaining any permit under these Regulations or of misleading any person engaged in the administration or enforcement of these Regulations.

No person shall, in any application for a permit under this Act or for the purpose of procuring the issue of any permit under this Act, wilfully furnish any false or misleading information or knowingly make any misrepresentation.

Any person who in any application makes any untrue representation is liable on summary conviction to imprisonment for not more than six months or to a fine not exceeding two hundred dollars, and upon conviction under this section the application shall be cancelled unless the Board otherwise directs.

Any person who wilfully refuses to furnish information or wilfully furnishes false information to a game officer or peace officer respecting a violation of this Act or of any regulation, the existence of or the place of concealment of any bird, nest or egg, or any portion thereof captured, killed or taken in violation of this Act or of any regulation, is guilty of a violation of this Act.

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Every person is guilty of an offence under these Regulations and liable on summary conviction to a fine of not more than five hundred dollars or to imprisonment for a term of not more than three months or both, who

- (a) with respect to any application, information or return under these Regulations submits any false or misleading information or makes any false statement therein;
- (b) falsely claims to be entitled to any payment under these Regulations; or
- (c) fails to use the fertilizer for the purposes set out in the application.

Every person who

- (a) being required to make any return or declaration under these Regulations or any order made pursuant to these Regulations, furnishes any false information or makes any false statement in such return or declaration or fails fully to complete such return or declaration;
- (b) makes any false entry in a permit book or a feed purchase permit or furnishes any false particulars of any retail sale to the Board for the purpose of, or to assist any person in obtaining an Advance Equalization Payment under these Regulations;...

(j) *Forgery*

Every person who forges, counterfeits, falsifies, or uses when so forged, counterfeited or falsified, any paper or document required under this Act, or for any purpose therein mentioned, whether written, printed or otherwise, or by any false statement procures such document, knowing the same to be forged, counterfeited or falsified, or forges, counterfeits or falsifies any certificate relating to any oath or declaration or affirmation by this Act required or authorized, is guilty of an indictable offence.

Every person who counterfeits, forges or alters any note or memorandum given by a pawnbroker for goods pledged, or causes or procures the same to be done, or utters, vends or sells such note or memorandum, knowing the same to be counterfeited, forged or altered, with intent to defraud any person, is liable, on summary conviction, to imprisonment for any term not exceeding three months.

(k) *Fraud*

Any person who

- (a) forges or alters any certificate of grade or falsely marks or uses the serial number of any certificate issued under the provisions of this Act;
- (b) wilfully lowers the quality or value of seeds by mixing any other seeds or material therewith after the said seeds have been tested and marked as required by this Act; or
- (c) wilfully obstructs, hinders, resists or in any way opposes any inspector while in the discharge of his duty;

is guilty of an offence and liable upon summary conviction to a fine of not less than fifty dollars and not exceeding five hundred dollars, or to imprisonment for any term not exceeding twelve months, or to both.

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Every person who has

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer,
- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer,
- (d) wilfully in any manner, evaded or attempted to evade, compliance with this Act or payment of taxes imposed by this Act, or
- (e) conspired with any person to commit an offence described by paragraphs (a) to (d),

is guilty of an offence, etc.

No person shall falsify or unlawfully alter, destroy, erase or obliterate any declaration, inspection certificate or other document made or issued under this Part or the regulations thereunder or any marks placed on any containers pursuant to this Part or the regulations thereunder.

A person who

- (a) for any of the purposes of this Act knowingly makes any false representation or any statement false in a material particular;
- (b) uses another person's certificate of citizenship or certificate of naturalization to be used to personate himself;

is guilty of an offence and is liable on summary conviction in respect of each offence to imprisonment, with or without hard labour, for a term not exceeding three months.

(l) *Inspectors*

...refuses entry by any inspector or other official of the Department to any building or other premises of or connected with a stockyard or packer's yard;

...refuses or neglects to keep proper books or records relating to such operation, or refuses access to such books or records to any inspector or representative of the Minister;

Every person who

- (a) fails to permit an inspector to enter upon any property, or to inspect, examine or make inquiries in pursuance of his duties,
- (b) fails to comply with any order, direction or requirement of an inspector made in pursuance of this Act or any regulation, or
- (c) in any manner obstructs an inspector in the execution of his duties under this Act,

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is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars, or to imprisonment for term not exceeding six months or to both.

Every person who refuses to admit any inspector or other officer into any place or premises or any steamship, vessel or boat, or any carriage, car, truck, horsebox, or other vehicle used for the carriage of animals, or who obstructs or impedes the execution of any order or regulation made by the Governor in Council or the Minister under this Act, is, for every such offence liable to a fine not exceeding one hundred dollars.

Where, after being requested to do so by an inspector, any person who has in his possession or under his control any food or drug refuses or omits

- (a) to show the inspector the place in which such articles are stored;
- (b) to admit the inspector into every such place;
- (c) to show the inspector all or any of such articles in his possession;
- (d) to permit the inspector to inspect the same;
- (e) to give any sample thereof; or
- (f) to furnish the inspector with any light or assistance he requires for any of such purposes;

he is guilty of an offence, and is liable, upon summary conviction, to a fine not exceeding two hundred dollars and costs, and not less than fifty dollars and costs, or to imprisonment for any term not exceeding three months, or to both.

Every person who removes, alters or interferes in any way with any goods seized under this Act without an inspector's order for disposal is guilty of an offence under this Act.

Every person who obstructs an inspector or other person charged with the enforcement of this Act from entering any premises to examine binder twine as provided by this Part, or who refuses to permit such examination, is liable on summary conviction to a fine of not less than fifty dollars and not more than five hundred dollars together with the costs of prosecution, and, in default of payment of such penalty and costs, is liable to imprisonment for a term not exceeding six months, unless such penalty is sooner paid.

Every person who wilfully obstructs or impedes an inspector in the performance of his duty under this Act or the regulations and every person who aids or assists him in so doing, is guilty of an offence.

Every person who refuses to admit, or who obstructs or impedes an inspector, and every person who aids and assists him therein, is liable on summary conviction to a penalty not exceeding five hundred dollars and costs.

If any person wilfully delays or obstructs an inspector in the exercise of any power under section 73 or fails to give such information or to produce such documents as required in section 74, or conceals or prevents or attempts to conceal or prevent any person from appearing before or being examined by an inspector, he is guilty of an offence against this Act.

Any person who obstructs an inspector in the performance of his duties, is guilty of an offence under this Act.

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(1) No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

(2) Every person who violates subsection (1) is guilty of an offence and is liable on summary conviction or on conviction on indictment to a fine of not more than five thousand dollars or to imprisonment for a term not exceeding two years or to both.

If any person wilfully delays or obstructs an inspector in the exercise of any power under section 76 or if any person fails or neglects to give such information or to produce such proof or documents as required in section 77, or conceals or prevents or attempts to conceal or prevent any person from appearing before or being examined by an inspector, he is guilty of an offence against this Act.

Any person who,

- (a) obstructs or interferes with any inspector or who declines reasonably to facilitate the carrying out of his inspection or the performance of his duties;
- (b) assaults, interferes with or obstructs any inspector or other official of the Department in the performance of his duties;

is guilty of an offence.

(m) *Licences*

Any holder of a licence who

- (a) fails to produce the same whenever required so to do by a judge, police or other magistrate or justice of the peace, before whom he may be brought charged with any offence, or by any peace officer in whose custody he may be, and fails to make any reasonable excuse for not producing the same; or
- (b) breaks any of the other conditions of his licence by an act which is not of itself punishable either upon indictment or upon summary conviction;

is guilty of an offence upon summary conviction of which he is liable to imprisonment for three months with or without hard labour.

(n) *Oath*

...refuses to be sworn or to affirm or declare, as the case may be, or to answer a question put to him or does not truthfully answer all questions put to him at an examination or inquiry under this Act.

(o) *Obstruction*

Any person who assaults, obstructs or interferes with any game officer or peace officer in the discharge of any duty under the provisions of this Act, or of any regulation, is guilty of a violation of this Act.

Any person who resists or obstructs the Director or any officer or employee of the Director in the execution of his duties under this Act is guilty of an offence punishable on summary conviction by a fine not exceeding two hundred dollars, or by imprisonment for a term not exceeding six months.

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Any person who wilfully obstructs any person acting under the provisions of paragraph (1)(a) or any person who has entered into a contract of insurance who refuses to furnish any information which he is in a position to furnish, is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars.

Any person who

- (a) refuses to supply information as required by this Act;
- (b) obstructs, hinders or delays a Reinstatement Officer in making an inspection of registers, books, cards, wage sheets, records of wages and other documents under this Act; or
- (c) fails or refuses to produce a register, book, card, wage sheet, record of wages or other document, as required by this Act

is guilty of an offence and liable, on summary conviction, in the case of a corporation to a fine of not less than one hundred dollars and not more than one thousand dollars and in the case of any other person to a fine of not less than twenty-five dollars and not more than five hundred dollars.

Every person who obstructs or aids or abets any other person in the obstruction of any officer or person in the execution of his duty under this Act, is guilty of an indictable offence and liable on conviction thereof to a fine not exceeding eight hundred dollars or to imprisonment for a term not exceeding two years or to both.

Any person

- (a) who wilfully delays or obstructs an inspector in the exercise of any power conferred upon him under these Regulations; or
- (b) who fails to give any information or produce any documents in his possession if required to do so under these Regulations; or
- (c) who refuses to reply to any reasonable question asked him by an inspector acting under these Regulations,

is guilty of an offence ...

Any person who resists or obstructs or attempts to resist or obstruct any peace officer or other person from carrying out his duties with respect to any order made pursuant to the provisions of this Order is guilty of an offence against this Order.

Every one who resists or wilfully obstructs any fishery officer or fishery guardian in the execution of his duty, or any person acting in aid of such officer or guardian, is guilty of an offence punishable on indictment, or on summary conviction, and liable if convicted on indictment to a term not exceeding two years' imprisonment, and on summary conviction to a term not exceeding six months' imprisonment with hard labour or to a fine of one hundred dollars.

Every person who interrupts, molests or hinders a surveyor in the performance of his duties with respect to a survey under this Act is guilty of an offence and is liable upon summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding two months or to both.

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Every person who obstructs or aids or abets any other person in the obstruction of any officer or person in the execution of his duty under this Act, is guilty of an indictable offence and liable on conviction thereof to a fine not exceeding eight hundred dollars or to imprisonment for a term not exceeding two years or to both.

Every person who assaults or resists any constable in the execution of his duty, or who incites any person so to do, is for every such offence, liable on summary conviction, to a fine not exceeding eighty dollars, or to imprisonment with or without hard labour for a term not exceeding two months.

...does or causes or permits to be done, anything in or about the premises where such business is carried on, intended or likely to mislead any officer in the discharge of his duty, or to prevent him from ascertaining the true quantity of the products of the business therein carried on;

(p) Pensions

Any person who by any false representation, personation or fraud obtains, or attempts to obtain, a pension for himself or for any other person is guilty of an indictable offence, and is liable to imprisonment for a period not exceeding two years, or to a fine not exceeding one thousand dollars, or to both.

Any person who wilfully makes any false statement under oath with reference to any pension or application for pension, is guilty of an indictable offence, and is liable to imprisonment for a period not exceeding six months, or to a fine not exceeding five hundred dollars, or to both.

Every person who, for the purpose of obtaining an allowance either for himself or for any other person, knowingly, in any application or otherwise, makes a false or misleading statement or fails to disclose any material fact, is guilty of an offence and liable on summary conviction to a fine of not less than fifteen dollars and not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both.

(q) Perjury

...knowingly makes any false or misleading statement at an examination or inquiry under this Act or in connection with the admission of any person to Canada or the application for admission by any person;

(r) Public Officers

Every inspecting officer or weighmaster who refuses or fails to carry out his duties in accordance with the provisions of this Act and with any regulations made or instructions issued by the Board is liable on summary conviction to imprisonment for not more than six months or a fine not exceeding two hundred dollars, unless he establishes that his refusal or failure was justified by special circumstances.

Every officer and every person employed with the concurrence of the Minister, for the prevention of smuggling, who makes any collusive seizure, or delivers up, or makes any agreement to deliver up, or not to seize any vessel, boat, carriage, goods or things liable to forfeiture under this Act, or who

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takes or accepts a promise of any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty, is guilty of an indictable offence, and liable for every such offence to a fine of one thousand dollars, and to imprisonment for a term not exceeding five years and not less than one year, and shall be incapable of serving Her Majesty in any office whatsoever.

(s) *Questions*

Any person required by this Act, or by any other law, to answer questions put to him by any officer, who refuses to answer or does not truly answer such questions, shall, in addition to any other penalty or punishment to which he is liable, incur a penalty of four hundred dollars.

Every manager or officer of any railway who refuses or neglects to give the information required by this Act, or who gives false information, shall incur a penalty not exceeding five hundred dollars and not less than one hundred dollars.

Every person who knowingly makes a false answer to any question relating to his enrolment that has been put to him by or by direction of the person before whom he appears for the purpose of being enrolled in the Canadian Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both.

(t) *Returns*

Every person who

- (a) being required to make a return under section 12 fails to make the return or knowingly or recklessly makes an untrue statement in the return,
- (b) fails to comply with a direction given to him under section 23,
- (c) wilfully obstructs a controller in the exercise of any of his functions under section 27,
- (d) fails to comply with a direction given by a controller under section 27 or in purported compliance with any such direction knowingly furnishes a false return, estimate or other false information, or
- (e) contravenes or fails to observe any provision of this Act or any order or regulation not mentioned in paragraphs (a) to (d),

is guilty of an offence.

Every contractor or sub-contractor who, having received the demand from Her Majesty hereinbefore referred to makes default in forwarding the list required, shall incur a penalty not exceeding one hundred dollars and not less than ten dollars for every day during which such default continues.

Any packer or other person who

- (a) fails to make any return which he is required by the Board to make; or
- (b) knowingly makes any untrue statement in any such return; or
- (c) without reasonable excuse fails to comply with any order or requirement of the Board;

is guilty of an offence.

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(u) *Secrecy*

(1) No person employed in the service of Her Majesty or the Bank of Canada shall communicate to any person not legally entitled thereto under the provisions of this Act or by direction of the Minister, or allow any such person to have access to, or any information or written statement with respect to, the Exchange Fund Account or the operation thereof.

No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto, any information obtained under the provisions of this Act, or allow any such person to inspect or have access to any written statement furnished under the provisions of this Act.

No person shall disclose any information furnished under paragraph (1) (g) without the consent of the person from whom it was obtained, except

- (a) to an official of a Government department requiring such information for defence purposes,
- (b) in any prosecution for an offence under this Act, or
- (c) with the consent of the Minister, in any civil action or proceedings.

Every person employed in the execution of any duty under this Act or any regulation who,

- (a) after having taken the prescribed oath, deserts from his duty, or wilfully makes any false declaration, statement or return touching any such matter; or
- (b) in the pretended performance of his duties thereunder, obtains or seeks to obtain information which he is not duly authorized to obtain, or
- (c) fails to keep inviolate the secrecy of the information gathered or entered on the schedules and forms, and who, except as allowed by this Act and the regulations, divulges the contents of any schedule or form filled in, in pursuance of this Act or any regulation, or any information furnished in pursuance of this Act or any regulation;

is guilty of an offence...

Any official employed under this Act who without due authority from the Department discloses any confidential information is guilty of an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding three months and is not thereafter eligible for employment in the service of Her Majesty.

(1) Subject to subsection (2), information, written or verbal, obtained under this Act shall not be disclosed to any person except the Minister, or his officers in the course of their employment.

(2) The Minister or a Reinstatement Officer may

- (a) disclose to an applicant or any person acting on his behalf, such information as may be necessary for the enforcement of his rights under this Act, and

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- (b) disclose information obtained under this Act to a department of the Government or to a court in connection with the administration or enforcement of this Act.

Every person who, while employed in the service of Her Majesty, has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under this Act or has allowed any such person to inspect or have access to any written statement furnished under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars.

No person who obtains, under or by virtue of this Act, information in relation to the business of any other person, shall, without the consent of such person, disclose or allow to be disclosed to anyone not legally entitled thereto, any information so obtained in such manner as to be identifiable as being in relation to the business of such person.

(v) *Vessels*

- (1) The owner or master of every vessel or any other person who
- (a) uses any port or place within Canada for the purpose of furnishing, providing, preparing or outfitting in any manner, whether in whole or in part, any vessel for the purpose of engaging in the Sockeye Salmon Fishery in contravention of any regulation or order made in pursuance of the said Convention; or
- (b) causes or permits any vessel to depart from any such port or place with the intention of fishing for Sockeye Salmon in contravention of any regulation or order made in pursuance of the said Convention;

is guilty of an offence against this Act.

(2) The owner or master of any vessel is, if the said vessel enters or comes to any port or place in Canada while upon or in the prosecution of any voyage at any time during which the said vessel fished or was used in fishing for Sockeye Salmon as aforesaid, or having on board the said vessel any Sockeye Salmon so caught, guilty of an offence against this Act.

9. Prosecutions

The Criminal Code applies to all prosecutions and it is not necessary to deal with prosecutions for offences under other statutes. Occasionally, however, some special provision is desired. The following are illustrations of the more common special provisions.

(a) *Civil Rights*

No proceedings taken under this Act against any person shall in any way interfere with, or lessen the right of, an aggrieved person to any legal remedy to which he may be entitled.

(b) *Consent*

Proceedings for an offence under this Act shall not be instituted except with the consent in writing of the Commission or an officer appointed under this

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Act and authorized in that behalf by special or general directions of the Commission.

No prosecution under this section or for an offence created by the regulations shall be instituted without the written consent of the Minister.

(1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.

(2) A consent by the Minister indicating that he has consented to the prosecution of a person named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, is a sufficient consent for the purposes of this section to the prosecution of the said person for any offence under this Act committed by or commencing on the said date.

(1) After the commencement of this Act, no proceedings to enforce a claim for services rendered in retaking a ship, aircraft or goods taken by an enemy shall be instituted and no such claim shall be made or shall be relied upon in any proceedings by way of defence or otherwise without the consent of the Attorney General of Canada.

(2) Evidence of the consent required by this section may be given by means of a document purporting to give such consent and to be signed by the Attorney General of Canada.

No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General, or his lawful deputy, for the province in which the offence is alleged to have been committed, nor after the expiration of sixty days from the time of the commission of the alleged offence.

(c) Defences

It is a defence to any charge laid in respect of an offence alleged to have been committed by a person under this Act by reason of failure to make any return or to comply with any direction or order if that person establishes that he used all due diligence to make the return or comply with the direction or order and failed to do so for a reason beyond his control.

It is no defence to a physician charged with an offence under section 6 that he did give, sell, furnish or prescribe any drug to an habitual user for self-administration, unless such habitual user was suffering from a diseased condition caused otherwise than by excessive use of any drug.

If any person charged with an offence under section 6 pleads or alleges that the drug in question was required for medicinal purposes, or was prescribed for the medical treatment of a person under professional treatment by the accused, or was required for medicinal purposes in connection with his practice as a dentist or veterinary surgeon, as the case may be, the burden of proof thereof shall be upon the person so charged.

No person having seeds in his possession for sale shall be prosecuted for violation of this Act or regulations thereunder if he satisfies the inspector that

(a) the seeds were purchased in Canada,

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(b) the seeds have not been altered or their quality impaired while in his possession, and
(c) he had no reason to believe that such seeds did not comply with the provisions of this Act or regulations thereunder,
and discloses the name and address of the person from whom he purchased the seed and the place and date of such purchase.

(1) Where the person accused proves to the magistrate before whom any prosecution is brought for selling, offering or exposing for sale any article of food or drug that is adulterated or misbranded,

- (a) that he purchased the article in question for and as an article of the same nature, substance and quality as that demanded of him by the purchaser or inspector,
- (b) that he sold it in the same state as that in which he purchased it, and
- (c) that he could not with reasonable diligence have obtained knowledge of its adulteration or misbranding,

he shall be discharged from such prosecution, but he is liable to pay the costs incurred by the prosecutor unless he has given due notice to him or gives notice in court that he will rely on the above defence and has called or calls the party from whom he purchased the said article into the case as hereinafter provided.

(2) Where, as provided in subsection (1), the person presenting such defence submits a sworn declaration that he purchased the article in good faith, he or the prosecutor shall lay information against such third party, and the magistrate shall at the same time hear all the parties and decide upon the entire merits of the case, including the question of costs, not only as regards the person originally accused, but also as regards the third party so brought into the case.

(d) Multiple Offences

(1) In any proceedings in respect of offences under this Act or the regulations, any information may include more than one offence committed by the same person and all such offences may be tried concurrently and one conviction for any or all such offences may be made.

(2) No information, warrant, summons, conviction or other proceedings for such offences shall be deemed objectionable or insufficient on the ground that it relates to two or more offences.

An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceedings in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

No information or complaint for an offence under this Act is open to objection on the ground that the information or complaint is for more than one matter of complaint or that it relates to more than one offence.

(e) Procedure

(1) Every person who wilfully furnishes false information or knowingly makes a false return in any application or return under this Act or the regulations, is guilty of an offence and

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- (a) may be prosecuted under the provisions of the *Criminal Code* relating to summary convictions and if convicted is liable to a fine not exceeding five hundred dollars or to imprisonment not exceeding six months or to both, or
- (b) may, at the election of the Attorney General of Canada be prosecuted upon indictment and if convicted, is liable to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding five years or to both.

Every person who uses any port or harbour within Canada for the purpose of equipping any vessel intended to be operated or used for any purpose connected with the operations of pelagic sealing in North Pacific waters is guilty of an offence and

- (a) may be prosecuted under the provisions of the *Criminal Code* relating to summary convictions and if convicted is liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both, or
- (b) may be prosecuted upon indictment and if convicted is liable to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding two years or to both.

Every person who violates or contravenes any of the provisions of this Act or any regulation is guilty of an offence and

- (a) may be prosecuted under the provisions of the *Criminal Code* relating to summary convictions and if convicted is liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding twelve months or to both, or
 - (b) may, at the election of the Attorney General of Canada or the Attorney General of the Province, be prosecuted under indictment and if convicted is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both.
- (1) Every person who, or whose employee or agent, has violated any provision of this Act is guilty of an offence and liable
- (a) on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or
 - (b) upon conviction under indictment to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or to both.
- (2) In a prosecution for a violation of this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not he is identified or has been prosecuted for the offence.

(f) Time

A prosecution of an offence under this Act or the regulations may be instituted at any time within twelve months from the time when the subject-matter of the prosecution arose.

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A prosecution for any offence under this Act or the regulations may be commenced at any time within twelve months from the time the offence is committed.

Any proceeding in respect of an offence under this Act or the regulations that is punishable on summary conviction may be instituted at any time within three years after the offence was committed.

Any information or complaint with respect to any offence against the provisions of this section, whenever the prosecution, suit or proceeding is instituted under the provisions of the *Criminal Code* relating to summary convictions may be laid or made within three years from the time when the matter of the information or complaint arose.

All seizures, prosecutions or suits for the recovery or enforcement of any of the penalties of forfeitures imposed by this Act, or any other law relating to the Customs, may be made or commenced at any time within three years after the offence was committed, or the cause of prosecution or suit arose, but not afterwards.

Notwithstanding any law to the contrary, any complaint or information with respect to any violation of the provisions of this Act may be made or laid within one year from the time when the matter of the complaint or information arose.

An information or complaint under the provisions of the *Criminal Code* relating to summary convictions, in respect of an offence under this Act, may be laid or made on or before a day five years from the time when the matter of the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, came to his knowledge, and the Minister's certificate as to the day on which such evidence came to his knowledge is conclusive evidence thereof.

Every prosecution for any indictable offence under this Part, and every action, suit or proceeding for any pecuniary penalty given by this Part to the person suing for the same, shall be commenced within the space of six months next after the act was committed, and not afterwards, unless the same is prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the court, and when commenced, shall be proceeded with and carried on without wilful delay.

A prosecution by indictment under this Act shall be commenced within five years from the time of the commission of the offence and in the case of an offence punishable on summary conviction the complaint shall be made or the information laid within three years from the time when the matter of the complaint or information arose.

All suits and all proceedings under this Part for offences shall be brought within twelve months from the cause of action or commission of the offence and not afterwards.

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Penalties incurred under this Act, or any regulation, shall be sued for within two years from the commission of the offence.

No prosecution for an offence against this Act shall be commenced after the expiration of five years from the time of its commission.

(1) No action, suit or information for any forfeiture imposed by this Act shall be brought or laid except within three years after the cause of action arose or after the offence for which such forfeiture is imposed was committed.

(2) No complaint or information in respect of an offence against this Act shall be made or laid except within three years from the time when the matter of complaint or information arose.

No proceeding for any penalty for any breach of the provisions of this Act or of any regulation made or licence granted thereunder shall be commenced except within twelve months from the date of the breach complained of.

No prosecution under this section or for an offence created by the regulations may be commenced after three years from the commission of the offence.

No proceeding for any penalty for any breach of the provisions of this Act or of any regulation or order made or licence granted thereunder shall be commenced after the expiration of eighteen months from the date of the breach complained of, and no action or other proceeding to enforce a claim or right of action that a person may have by reason of any breach of any of the said provisions shall be commenced after the expiration of eighteen months from the date of such breach.

No action, prosecution or other proceedings lies against any person for an act done in pursuance or execution or intended execution of this Act or any regulations, or of any military or departmental duty or authority, or in respect of any alleged neglect or default in the execution of this Act, regulations or such duty or authority unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of continuance of injury or damage, within six months after the ceasing thereof.

No person is liable to any forfeiture or penalty imposed by this Act, unless proceedings are taken for the recovery thereof within twelve months after such forfeiture or penalty has been incurred.

The provisions of the *Criminal Code* prescribing a time limit for making a complaint or laying an information in respect of offences punishable on summary conviction do not apply to proceedings in respect of an offence under this Act.

(g) Venue

A prosecution for any offence under this Part may be brought and carried on and a conviction had in the city, town or other place from which any intoxicating liquor is unlawfully sent, shipped, taken or carried as aforesaid.

Every offence against this Act or the regulations shall, for the purposes of any prosecution, be deemed to have been committed and every cause of complaint under this Act or any regulation shall be deemed to have arisen in the place where the offence was actually committed, or the place where

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it was first discovered by an inspector or the place where the defendant resides or is found.

Every offence against this Act, or against any order or regulation of the Governor in Council, or of the Minister, and every cause of complaint under this Act, may be prosecuted and tried either in the place in which such offence or cause of complaint was committed or arose, or in any place in which the person charged or complained against happens to be.

A complaint or information in respect of an offence under this Act may be heard, tried or determined by a police or stipendiary magistrate or a justice or justices of the peace if the accused is resident or carrying on business within his or their territorial jurisdiction although the matter of the complaint or information did not arise in his or their territorial jurisdiction.

(1) Any proceeding in respect of an offence under this Act or the regulations may be instituted, tried or determined at the place in Canada where such offence was committed or at the place in Canada in which the person charged with the offence is or has an office or place of business at the time of institution of such proceeding.

(2) Any proceedings in respect of an offence under this Act or the regulations that is committed outside Canada may be instituted, tried or determined at any place in Canada.

Any complaint or information in respect of an offence under this Act or the regulations may be heard, tried or determined in the place in which the offence was committed or the matter of the complaint or information arose or in any place in which the accused is apprehended or happens to be.

The venue in any such prosecution or suit may be laid in any county in the province notwithstanding that the cause of prosecution or suit did not arise in such county.

A complaint or information in respect of an offence under this Act may be heard, tried or determined by any police or stipendiary magistrate or any justice or justices of the peace if the accused is resident, carrying on business, found or apprehended or is in custody within his or their territorial jurisdiction although the matter of the information or complaint did not arise within his or their territorial jurisdiction.

For the purpose of jurisdiction under the provisions of the *Criminal Code* relating to summary convictions, in any complaint, information or conviction for a violation of any of the provisions of this Act or regulations, the matter complained of may be alleged and shall be held to have arisen at the place where the produce was packed, sold, offered, exposed or had in possession for sale or transportation, as the case may be, or at the residence or usual place of residence of the accused.

A prosecution for any offence under this Act may be brought and carried on, and a conviction had, in the city, town or place to or into which any intoxicating liquor is unlawfully imported, sent, taken or transported, or in the place where the accused resides, or in the city, town, or other place from which any intoxicating liquor is unlawfully imported, sent, taken or transported, as aforesaid; but no prosecution shall be brought in any province

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against a person not within or residing in such province without the written approval of the attorney-general of such province.

Every offence against this Act, or against any regulation, shall, for the purposes of proceedings under this Act, or of any such regulation, be deemed to have been committed, and every cause of complaint under this Act, or any such regulation, shall be deemed to have arisen either in the place in which it actually was committed or arose, or in any place in which the person charged or complained against happens to be.

In any prosecution, suit or other proceeding for the recovery of any penalty or in respect of any forfeiture as aforesaid, or for an offence against this Act or any other law relating to the Customs, or to trade or navigation, the averment that the cause of prosecution or suit arose, or that such offence was committed within the limits of any district, county, port or place is sufficient evidence of the fact without proof of such limits, unless the contrary is proved.

Where any offence under this Act is committed in, upon or near any waters forming the boundary between different counties or districts, or fishery districts, such offence may be prosecuted before any justice of the peace in either of such counties or districts, or before any fishery officer for either fishery district.

In any complaint, information or conviction under this Act the matter complained of may be declared and shall be held to have arisen within the meaning of the *Criminal Code* relating to summary convictions, at the place where the feeding stuff was sold, offered or had in possession for sale, found or placed under detention.

(h) *Voluntary Fines*

If any sum of money within the limits of the penalties provided by this Act is voluntarily paid to and accepted by the Minister as a penalty and costs for a first offence under this Act, such sum of money may be dealt with as if lawfully recovered upon a prosecution.

(1) Where in the case of a ship or aircraft bringing persons to Canada the transportation company operating it or the owner or master thereof has, in the opinion of an immigration officer in charge, committed an offence under this Act or the regulations and a sum of money has been deposited with such officer pursuant to section 46, the Minister may impose a penalty against the offender up to but not exceeding the maximum fine that could be imposed for such offence and may retain such penalty from the sum of money deposited and shall return the balance, if any, of the deposit to the person who deposited it.

(2) The imposition of a penalty under this section has the same effect as if such penalty had been imposed as a fine on a conviction for the offence.

(3) Any person upon whom a penalty was imposed may bring an action in the Superior Court for the recovery thereof on the ground that he did not commit the offence in respect of which the penalty was imposed, but the burden of proof shall lie upon him to show that he did not commit such offence.

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10. Forfeitures

Frequently, a forfeiture is prescribed by a statute as punishment for an offence. Careful consideration must be given to the drafting of an appropriate forfeiture provision. A number of elements are usually involved. First, there is an offence, the commission of which creates a forfeiture or a possibility of a forfeiture. Secondly, someone, probably an official, has authority to seize the article, that is to say, to take possession of it. Thirdly, there is the forfeiture, that is to say, the legal transfer of title. Finally, there is usually authority to dispose of the forfeited article. There are problems in relation to each element.

The precise moment that the forfeiture takes place should be ascertainable. There are a number of possibilities. Does title pass when the offence was committed, and, if so, must there be a conviction or other judicial finding that an offence was committed with retroactive effect? Does title pass upon seizure? Does title pass only by judicial decree, and in what proceedings?

The subject-matter of the forfeiture should also be clearly ascertainable. Is it only property involved in the offence, or is it other property as well? Who has authority to seize the property and deprive the owner of possession? How long can it be kept? How may it be dealt with, or disposed of, after forfeiture? Is the forfeiture in addition to, or in lieu of, some other punishment?

There are also policy considerations. Should valuable property be forfeited for trivial offences? Should officials have authority to seize on suspicion and then hold indefinitely without bringing the matter to a head by the institution of proceedings? Is the citizen to be deprived of the use of his property and remain under a cloud of suspicion without an opportunity of forcing a judicial determination of his guilt or innocence? Should property be lost unless a court has decreed it? These, and other questions, must be considered in relation to every proposal for forfeiture.

There is also the Canadian Bill of Rights to be considered. It recognizes and declares the existence of the right of the individual to enjoyment of property and the right not to be deprived thereof except by due process of law. We have, as yet, no jurisprudence of our own, but, based on the law in the United States, it would seem that property of trivial value, or property inherently dangerous, illegal, etc., may be forfeited without judicial intervention, but in all other cases final forfeiture ought not to take place without an opportunity of having the matter judicially determined.

It is at once obvious that it will not do to say merely that property *shall be forfeited* or that it is *liable to forfeiture*, language that is found all too frequently in the statutes. The *Customs Act* attempts to give meaning to general words of forfeiture by a definition as follows:

In this Act...“seized and forfeited”, “liable to forfeiture” or “subject to forfeiture”, or any other expression that might of itself imply that some act subsequent to the commission of the offence is necessary to work the forfeiture, shall not be construed as rendering any such subsequent act

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necessary, but the forfeiture shall accrue at the time and by the commission of the offence, in respect of which the penalty of forfeiture is imposed.

The statute at least recognizes some of the problems.

In recent years an attempt has been made to set out in detail all the steps involved in a forfeiture and to indicate clearly when and how forfeiture takes place. The following has become somewhat of a stock section.

(1) Whenever an inspector believes on reasonable grounds that this Act or the regulations have been violated he may seize the agricultural products and other things by means of or in relation to which he reasonably believes the violation was committed.

(2) Agricultural products and other things seized pursuant to subsection (1) shall not be detained after

(a) the provisions of this Act and the regulations have, in the opinion of the inspector, been complied with, or

(b) the expiration of ninety days from the day of seizure, or such longer period as may be prescribed with respect to any agricultural product, or other thing,

unless before that time proceedings have been instituted in respect of the violation, in which event the agricultural products and other things may be detained until the proceedings are finally concluded.

(3) Where a person has been convicted of a violation of this Act, every agricultural product or other thing by means of or in relation to which the offence was committed is, upon the conviction, in addition to any penalty imposed, forfeited to Her Majesty if such forfeiture is directed by the courts.

Under the foregoing provision, a seizure may be made, upon a reasonable suspicion, of the goods involved in an offence. If the owner puts the goods in order, as, for example, by re-labelling (which would have to be done under some arrangement with the inspector) the goods must be released; also, if ninety days have slipped by and no proceedings have been instituted, the goods must again be released. On the other hand, if proceedings in the way of a prosecution are taken before the ninety days have expired, the goods may be kept until the proceedings are concluded. The suspected offender is protected. The goods cannot be taken from him and held indefinitely without having his guilt or innocence tried by a court.

The section also states clearly when and how the forfeiture takes place. There is no forfeiture unless there is a conviction, and the court directs forfeiture. The following is a slight variation.

(1) An officer employed in the administration of this Act or a peace officer as defined in the *Criminal Code* may seize any article by means of or in relation to which he reasonably believes an offence under this Act has been committed.

(2) An article seized pursuant to subsection (1) may be detained for a period of one month following the day of seizure unless during that period proceedings under this Act in respect of the article are undertaken, in which

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case the article may be further detained until the proceedings are finally concluded.

(3) Where a person is convicted of an offence under this Act, the convicting court, judge or magistrate may, in addition to any other penalty that may be imposed, order that an article by means of or in relation to which the offence was committed be forfeited, and thereupon the article is forfeited to Her Majesty and may be disposed of in such manner and at such time and place as the Minister may direct, but no article shall be disposed of pending an appeal against the conviction or before the time within which the appeal may be taken has expired.

The following provision is an expansion of the foregoing forms:

(1) A Protection Officer may, anywhere in the convention waters except the territorial waters of the United States, seize

- (a) any fishing vessel belonging to or operated by a citizen, national or resident of Canada by means of or in relation to which vessel he suspects on reasonable grounds that an offence against this Act was committed;
- (b) any fishing vessel belonging to or operated by a citizen, national or resident of the United States by means of or in relation to which vessel he suspects on reasonable grounds that an offence against this Act was committed in the territorial waters of Canada;
- (c) any goods aboard a fishing vessel described in paragraph (a) or (b), including fish, tackle, rigging, apparel, furniture, stores and cargo; or
- (d) a fishing vessel described in paragraph (a) or (b) or any of the goods mentioned in paragraph (c).

(2) A Protection Officer may, anywhere in the convention waters except the territorial waters of the United States, arrest without warrant,

- (a) any citizen, national or resident of Canada whom he on reasonable grounds suspects of having committed an offence against this Act; or
- (b) any citizen, national or resident of the United States whom he on reasonable grounds suspects of having committed an offence against this Act in the territorial waters of Canada.

(3) Subject to this section, the fishing vessel and goods seized under subsection (1) shall be retained in the custody of the Protection Officer making the seizure or shall be delivered into the custody of such person as the Minister may direct.

(4) Where fish or other perishable articles are seized under subsection (1) the Protection Officer or other person having the custody thereof may sell them, and the proceeds of the sale shall be paid to the Receiver General or shall be deposited in a chartered bank to the credit of the Receiver General.

(5) Where a person is convicted of an offence against this Act, the convicting court or judge may, in addition to any other penalty imposed, order that

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- (a) any fishing vessel seized under subsection (1) by means of or in relation to which the offence was committed,
- (b) any goods aboard the fishing vessel, including fish, tackle, rigging, apparel, furniture, stores and cargo, or, if any of the goods have been sold under subsection (4), the proceeds thereof, or
- (c) the fishing vessel and any of the goods mentioned in paragraph (b) or the proceeds thereof,

be forfeited, and upon such order being made the fishing vessel, goods or proceeds so ordered to be forfeited are forfeited to Her Majesty in right of Canada.

(6) Where a fishing vessel or goods have been seized under subsection (1) and proceedings in respect of the offence have been instituted, the court or judge may, with the consent of the Protection Officer who made the seizure, order redelivery thereof to the accused upon security by bond, with two sureties, in an amount and form satisfactory to the Minister, being given to Her Majesty.

(7) Any fishing vessel or goods seized under subsection (1) or the proceedings realized from a sale thereof under subsection (4) shall be returned or paid to the person from whom the fishing vessel or goods were taken if the Minister decides not to institute a prosecution in respect of the offence, and in any event shall be so returned or paid upon the expiration of three months from the day of seizure unless before that time proceedings in respect of the offence are instituted.

(8) Where proceedings in respect of an offence against this Act have been instituted and a fishing vessel or goods are at the final conclusion of the proceedings ordered to be forfeited, they may be disposed of as the Minister directs.

(9) Where a fishing vessel or goods have been seized under subsection (1) and proceedings in respect of the offence have been instituted, but the fishing vessel or goods or any proceeds realized from a sale thereof under subsection (4) are not at the final conclusion of the proceedings ordered to be forfeited, they shall be returned or the proceeds shall be paid to the person from whom the fishing vessel or goods were taken, unless there has been a conviction and a fine imposed in which case the fishing vessel or goods may be detained until the fine is paid, or the fishing vessel and the goods may be sold under execution in satisfaction of the fine, or the proceeds realized from a sale of any of the goods under subsection (4) may be applied in payment of the fine.

Sometimes it is necessary to provide for a forfeiture without a conviction, particularly in relation to game, fisheries, etc., where, for example, unlawful gear may be found. Nevertheless, the forfeiture may be made to depend upon a judicial determination. The following are some examples:

Where any chattel is seized under the provisions of this Act, the same shall, without undue delay, be taken before a magistrate or two justices of the peace who, upon satisfactory proof that such chattel was in possession or used contrary to the provisions of this Act or was used in connection with the commission of any offence under this Act and the regulations, may order

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same to be forfeited to Her Majesty; or, in the case of timber, trees, hay or minerals, to be held for such time as may be deemed proper, pending payment of any penalty in lieu of forfeiture.

Any game officer who believes on reasonable grounds

- (a) that any of the following articles, namely, any gun or other weapon, ammunition, boat, skiff, canoe, punt, or vessel of any description, team, wagon, or other outfit, motor vehicle or aircraft of any kind, decoy appliance or material of any kind is being or has been used in violation of or for the purpose of any violation of this Act or any regulation, or
- (b) that, in violation of this Act or any regulation any of the following articles, namely, any bird, nest or egg, has been taken, caught or killed, or is had in possession,

may seize the article, and shall deliver it to a justice of the peace; and the justice of the peace to whom the article is delivered, if he finds that the article was used in violation of or for the purpose of any violation of this Act or any regulation, or was taken, caught, killed or had in possession in violation of this Act or any regulation, may make an order forfeiting the article to Her Majesty.

The following are some additional provisions taken from the statutes. Most of them go back many years, and contain features that would now be regarded as legally or politically objectionable. They do, however, illustrate different situations that may arise, and may be helpful in working out special provisions.

Any can of fish or shellfish that bears any false or misleading mark or is incorrectly labelled or marked and not labelled or marked in accordance with this Act or of the regulations, may be seized by any inspector, or by any Customs, excise or police officer or by any constable, and shall be confiscated to Her Majesty by any two justices of the peace or by any magistrate having the powers of two justices of the peace, if it is found that the label or marking is intended or calculated to deceive.

(1) Any live stock or live stock product seized for contravention of any provision of this Part or regulations thereunder shall be disposed of as the Minister may direct.

(2) Any livestock or live stock products detained, seized or disposed of under the provisions of this Part or regulations thereunder are at the risk and expense of the owner thereof and the inspector shall immediately notify the owner or his agent by prepaid telegram, letter or otherwise that such live stock product has been seized, detained or disposed of as the case may be.

Any seed advertised, offered, sold, had in possession for sale or carried for the purpose of seeding in Canada contrary to the provisions of this Act, may be detained by an inspector, together with any container enclosing same, and held as may be prescribed by regulation, at the expense of the owner until compliance with the Act is effected; if the owner fails to comply with the aforesaid provisions within sixty days such seed may be confiscated and disposed of as the Minister may direct.

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All produce and all produce packages in respect of which any offence against this Act or regulations thereunder is committed may be placed under detention by an inspector at the risk and expense of the owner until such time as such produce or produce packages comply with the provisions of this Act or regulations, or after a conviction of the owner by a court of competent jurisdiction, may be forfeited to Her Majesty and may be destroyed or otherwise disposed of as the Minister may direct.

(1) Every article in respect of which a conviction is had under this Act shall be broken, broken down or defaced and every part of such article, except precious and semi-precious stones and watch movements, is immediately upon such conviction, in addition to any penalty imposed, *ipso facto* forfeited to Her Majesty and shall be disposed of by such person, in such manner and at such time and place as the Minister of Trade and Commerce may direct.

(2) All printed or written matter in respect of which a conviction is had under this Act is immediately upon such conviction in addition to any penalty imposed, *ipso facto* forfeited to Her Majesty and shall be destroyed by such person, in such manner and at such time and place as the Minister of Trade and Commerce may direct.

(1) Any property of any kind which any person exports or attempts to export from Canada or imports or attempts to import into Canada contrary to this Act or the regulations, or which any person buys or sells or in any way deals with or attempts to buy or sell or in any way deal with contrary to this Act or the regulations, or the possession, ownership or control of which any person fails to declare as required by this Act, may, in addition to any other penalty which may have been imposed on any such person, or to which any person may be subject with relation to such unlawful act or omission, and whether any prosecution in relation thereto has been commenced or not, be seized and detained by any Inspector or Officer and shall be liable to forfeiture at the instance of the Attorney General of Canada upon proceedings in the Exchequer Court of Canada or in any Superior Court, subject, however, to a right of compensation on the part of any innocent person interested in such property at the time it became liable to forfeiture or who acquired an interest therein subsequent to such time as *bona fide* transferee thereof for value without notice, which right may be enforced in the same manner as any other right against His Majesty.

(1) Where a person is convicted of an offence for having in possession, selling, offering for sale, storing, using, making, manufacturing or importing any explosive that is not an authorized explosive, the court or judge, in addition to any other penalty that may be imposed, shall declare that the explosive by means of, or in relation to which, the offence was committed, be forfeited to the Crown, and thereupon the explosive may be seized and may be destroyed or otherwise disposed of by such person or persons in such manner and at such time and place as the Minister may direct, but no such explosive shall be destroyed or otherwise disposed of pending an appeal against such conviction or before the time within which such appeal may be taken has expired.

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(2) Any explosive that appears to the Minister to be abandoned or to have deteriorated and to be a danger to persons or property may be seized and destroyed or otherwise disposed of by such person, in such manner and at such time and place as the Minister may direct.

Any spirits, wine or beer, produced distilled, imported, purchased, sold, supplied or delivered in contravention of any of the provisions of this Order may (in addition to any other penalty which may be imposed on any person or to which any person may be subject with relation to such offence and whether or not any prosecution in relation thereto has been commenced), be seized and detained by such person or persons as the Minister may by writing authorize and shall be liable to forfeiture and may be forfeited at the instance of the Minister.

Where a person is convicted under subsection (1) the convicting magistrate or justice may in his discretion order the gold in respect of which the conviction is had to be forfeited and thereupon the gold is forfeited to Her Majesty.

(4) Where any peace officer has reasonable and probable grounds for believing that any person has committed or has reason to believe that any person is about to commit an offence described in subsection (1) or has in his possession or in his belongings any gold in respect of which the royalty imposed by section 83 has not been paid, such peace officer may without warrant search such person and his belongings and any articles believed to be his belongings and may seize any gold found upon such person or in such belongings.

(5) No female shall be searched pursuant to this section except by a suitable woman who is a peace officer or is authorized by the peace officer to make the search.

(6) Any gold seized pursuant to subsection (1) of this section may be detained for a period of six months, and if before the expiration of such period any proceedings with respect to such gold are taken under this Act may be further detained until such proceedings are finally concluded.

(7) For the purpose of this section the expression "peace officer" means a peace officer as defined in section 2 of the *Criminal Code*.

Any goods, wares, or merchandise dealt with contrary to any order or regulation made under this Act may be seized and detained and shall be liable to forfeiture at the instance of the Minister of Justice, upon proceedings in the Exchequer Court of Canada, or in any Superior Court, and any such Court may make rules governing the procedure upon any proceedings taken before such Court or a Judge thereof under this section.

Where any person is convicted of an offence under these Regulations, any vessel, boat, canoe, raft or vehicle of any description used by him in connection with the commission of such offence, and any canned herring or canned sardines in respect of which the offence was committed, and all other goods which are intermixed therewith, shall be liable to forfeiture to His Majesty, and the magistrate or justice of the peace before whom such person is convicted may, and if application for such forfeiture is made to him by or on behalf of His Majesty, shall order that the same are forfeited to His Majesty,

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(1) The justice before whom any such game is brought may receive the information or complaint of the person so bringing the same and issue his summons thereon directed to the person from whose possession such game was taken and do all other acts and matters necessary preliminary to the hearing of such complaint or information.

(2) The justice hearing and determining the case if he finds that any provision of this Act has been contravened in respect of the game so brought before him shall declare the same forfeited to Her Majesty and shall dispose of the same as he may be directed by the Attorney-General of the province from which such game had been or was about to be unlawfully removed.

If any entry passed by any Custom-house is false in any particular to the knowledge of any person connected with the making thereof, all the packages and goods included or pretended to be included, or which ought to have been included in such entry, shall be seized and forfeited.

Any proprietary or patent medicines found on sale in Canada not marked as required by section 5, or offered for sale or sold by any manufacturer who does not hold the licence to sell required by section 6, may be seized, and shall be forfeited to Her Majesty, and may be destroyed or otherwise dealt with as the Minister shall direct.

Balls of binder twine not properly and correctly labelled may be seized by an inspector and confiscated and disposed of as directed by the Minister, whose decision therein is final.

When any person is convicted of an offence against this Act, the opium pipe or other article or the drug in respect of which the offence was committed and all receptacles of any kind whatsoever found containing the same, and any vehicle, motor car, automobile, boat, canoe, aeroplane or conveyance of any description, proved to have contained such opium pipe or other article or drug or to have been used in any manner in connection with the offence for which such person has been so convicted, and any moneys used for the purchase of such drug, shall be forfeited to Her Majesty, and shall be delivered to the Minister for disposition.

Any opium pipe or other article mentioned in subsection (1) or (2) and any drug or drugs so found under this section shall, unless otherwise required, be delivered by the magistrate to the Minister and shall at the expiration of three months from such finding be forfeited to Her Majesty and shall be disposed of as the Minister may direct, unless within the said period of three months it is established to the satisfaction of the court that no offence has been committed in connection therewith.

CHAPTER V

EVIDENCE PROVISIONS

1. Purposes

An evidence clause usually has two purposes: first, to provide for the acceptance of a document as evidence in judicial proceedings, and secondly, to assign to it a degree of probative value.

Admissibility is ensured by stating simply that the document *is evidence, is admissible in evidence, shall be admitted (or received) in evidence*. The court cannot then reject the evidence; it must be received and, having been received, it forms part of the record.

Some provisions are confined to admissibility and do not deal with value. For example, the *Canada Evidence Act* provides that

Evidence of any...regulation...made or issued...by...any minister...may be given...by the production of a copy of the *Canada Gazette*...purporting to contain a copy...of such regulation...

This form is also used to equate for evidence purposes a document and a copy; the copy is made admissible (thus abrogating the best evidence rule) and has the same effect as the original. Thus

A copy of any by-law of the company, sealed with the seal of the company and purporting to be signed by the secretary of the company, shall be received as evidence.

A copy of any map, plan or other document in the custody of the secretary of the Department, certified by him to be a true copy, shall be received in evidence and shall have the same force and effect as the original.

2. Types

Three degrees of probative value are commonly found. In the first degree, the document shifts the burden of adducing evidence. In other words, it raises a rebuttable presumption of fact. In the absence of any other evidence, the fact may be taken as proved. Any evidence on the other side will be sufficient to destroy the presumption. If other evidence is adduced, the court must then weigh the two, and find which preponderates. The first degree probably follows as a matter of course from the reception of the document, and no special words would appear to be necessary to assign this degree. Thus, if a document is stated to be evidence, then it follows that in the absence of other evidence the fact is established.

All books required by this Act to be kept by the secretary or any other officer of the company are, in any action or proceeding against the company or any shareholder, evidence of all the facts purporting to be therein stated.

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An inspection certificate purporting to be signed by an inspector or other official in the performance of his duties under this Act is evidence of the facts stated in the certificate.

In a prosecution for a violation of this Act, a document purporting to be the certificate of an analyst or a grader shall be received in evidence without proof of the signature of the person by whom it purports to be signed and without proof of his official position.

In any prosecution under this Act, evidence of an order of the Board may be given by the production of a copy thereof purporting to be certified to be a copy by the chairman, secretary or other official of the Board.

A document purporting to be certified by the clerk to any licensing justices to be a true copy of an entry in the register of licences kept by him shall be received as evidence of the matters contained in the entry.

In the second degree, the document shifts the burden of proof. In this case, there is a stronger presumption. The fact is taken as proved, unless the other side proves the contrary. It is not enough to adduce some evidence; the other side must introduce preponderant evidence or judgment will be given against him.

For the purposes of this Act, a person who appears to the justice dealing with an information or complaint to be under the age of sixteen years shall be presumed to be under that age unless it is shown by evidence that he is in fact over that age.

For the purposes of this Act, and of any proceedings taken hereunder, any notice or other communication sent by registered mail shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

A document purporting to be certified on behalf of the surveying authority to be a copy of a definite map or statement or of any part thereof is receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.

In the third degree, the document proves the fact conclusively. The issue is determined, and no evidence by the other side can change the result.

Notice of a consent under this Act and of the terms thereof shall be given by proclamation of the Governor in Council published in the *Canada Gazette*, and such proclamation is conclusive evidence of the consent and the terms thereof.

For the purposes of this Act, a certificate of a veterinary inspector to the effect that an animal is or was affected with a disease specified in the certificate is conclusive evidence in all courts of justice of the matter certified.

It was long the practice to say that a document is *prima facie* evidence. If the document is evidence, it is evidence, and it is difficult to see what more is accomplished by adding *prima facie*. Literally, it means *at first sight*; but if it is evidence at first sight, it remains evidence at second and third sight. Once admitted, it remains evidence, although its value may change, depending

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upon what other evidence is given. This was changed in some statutes to say that the document is *prima facie proof* of a fact; that is to say, the evidence, *at first sight*, is proof, but at second sight, when other evidence has been adduced, it is no longer proof. By virtue of an amendment to the *Interpretation Act* that effect is achieved by saying simply that a document is evidence. Subsection 24(1) of the *Interpretation Act* reads as follows:

24. (1) Where an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in any judicial proceedings, the document is admissible in evidence and the fact shall be deemed to be established in the absence of any evidence to the contrary.

In many of the forms set out below the phrase *prima facie* is used because the forms were taken from actual statutes.

The third degree of value is rarely assigned. It is generally done by stating that a document is *conclusive evidence* or *conclusive proof* of a fact.

Evidence provisions are generally tied very closely to the particular provisions of the Acts in which they occur. It is, therefore, not possible to set forth an accurate classification. However, four general kinds are discernible:

1. Those that provide simply for the admission of a document in evidence.
2. Those that are evidence of the facts stated therein, as, for example, a certificate of analysis.
3. Those that are created for evidence purposes and are evidence of the facts stated therein, as, for example, a certificate under the *Unemployment Insurance Act* showing the amount of contributions due, the amount paid, the dates of payment, etc. Documents in this class usually contain facts appearing in official records or documents.
4. Those that establish facts extraneous to the document, as, for example, a provision that a certificate of posting a letter by mail is evidence of its receipt by the addressee.

Where an evidence provision requires the authentication of the document by the certificate or signature of an official, it usually provides in addition that no proof of the signature of official character is required. In the absence of such a further provision, the party tendering the document might be called upon to prove that the signature is genuine and that the person signing the certificate was at the date thereof an official entitled to certify.

Where a reference is made to a copy of a document it is usual to refer to a document *purporting to be a copy*; otherwise it might be necessary to prove the document is a copy, which could be done only by producing the original.

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3. Examples

The examples below are grouped according to subject-matter, rather than according to purpose or type. In many cases there is a mixture of purposes or types, and it is not feasible to attempt a classification according to the purpose or types outlined earlier.

(a) *Absence*

Where a man of the air force reserve fails to appear at the time and place at which he is required upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of the man's absence shall be made by the prescribed officer in the prescribed manner and in the prescribed service books and the entry is conclusive evidence of the fact of the man's absence.

(b) *Age*

For the purposes of this Act any person who appears to the justice dealing with an information or complaint hereunder to be under the age of sixteen years shall be presumed to be under that age unless it is shown by evidence that he is in fact over that age, and the provisions of the *Criminal Code* relating to the proof of the age of young persons apply to offences under this section.

Where in any proceedings under this Act the person by whom the proceedings are brought alleges that any person whose age is material to the proceedings is under, of, or over, any age, and satisfies the court that having used all reasonable diligence to obtain evidence as to the age of that person he had been unable to do so, then, unless the contrary is proved, the court may presume that person to be under, of, or over, the age alleged.

(c) *Appeal, absence of*

An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, shall be received as *prima facie* evidence of the statements contained therein.

(d) *Appointment*

Any letter purporting to be signed

- (a) by the Minister or the Dominion Statistician, or by any person thereunto authorized by the Governor in Council, and giving notice of any appointment or removal of or setting forth any instructions to any person employed in the execution of this Act; or
- (b) by any officer, census commissioner or other person thereunto duly authorized, giving notice of any appointment or removal of or

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setting forth any instructions to any person employed under the superintendence of the signer thereof,

is *prima facie* evidence of such appointment, removal or instructions, and that such letter was signed and addressed as it purports to be.

(e) *Books*

Where it appears

- (a) by the books or accounts kept by or in the office of any person employed in the collection or management of the revenue,
- (b) in any accounting by such person, or
- (c) by his written acknowledgement or confession,

that such person has, by virtue of his office or employment, received money belonging to Her Majesty and has refused or neglected to pay over such money to the proper persons at the proper times, an affidavit deposing to such facts, taken by any person having knowledge thereof, shall in any proceedings for the recovery of such money, be received in evidence and is *prima facie* proof of the facts stated therein.

All books required by this Act to be kept by the secretary or by any other officer of the company charged with that duty are, in any suit or proceeding against the company or against any shareholder, *prima facie* evidence of all facts purporting to be therein stated.

(f) *Burden of Proof*

Where in any proceedings relating to customs or excise any question arises as to the place from which any goods have been brought or whether

- (a) any duty has been paid or secured in respect of any goods,
- (b) any goods or other things whatsoever are of the description or nature alleged in the information, writ or other process,
- (c) any goods have been lawfully imported or lawfully unloaded from any ship or aircraft,
- (d) any goods have been lawfully loaded into any ship or aircraft or lawfully exported or were lawfully waterborne,
- (e) any goods were lawfully brought to any place for the purpose of being loaded into any ship or aircraft or exported,
- (f) any goods are or were subject to any prohibition of or restriction on their importation or exportation,

then, where those proceedings are brought by or against the Commissioners, a law officer of the Crown or an officer, or against any other person in respect of anything purporting to have been done in pursuance of any power or duty conferred or imposed on him by or under the customs or excise Acts, the burden of proof lies upon the other party to the proceedings.

The burden of proving the right to import intoxicating liquor, or to cause intoxicating liquor to be imported, or to send, take or transport intoxicating liquor, or to cause intoxicating liquor to be sent, taken or transported into any province is on the person accused.

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Where any person is charged with an offence under paragraph (a), (d), (e), (f), or (g) of subsection (1) of section 4, it is not necessary for the prosecuting authority to establish that the accused had not a licence from the Minister or was not otherwise authorized to commit the act complained of, and if the accused pleads or alleges that he had such licence or other authority the burden of proof thereof is on the person so charged.

(g) *By-Laws*

A copy of any by-law of the company, under its seal and purporting to be signed by any officer of the company, shall be received as *prima facie* evidence of such by-law in all courts in Canada.

A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is *prima facie* evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form.

Any document purporting to contain or to be a copy of any by-law, direction or order of the National Board, or of any Regional Board, and purporting to be signed by the Chairman of any such Board, or by the Chief Executive Officer or Secretary of the National Board, or Chief Executive Officer of a Regional Board, is in any proceedings under this Order evidence of the by-law, direction or order therein contained or of which it purports to be a copy.

(h) *Certificate*

Any document purporting to be a certificate issued for the purposes of any provision of this Act, and to be signed by or on behalf of an authority specified therein, shall be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of that authority; and where under the provision in question a certificate is required to be issued by or on behalf of the appropriate authority of a country, and the document purports to be signed by or on behalf of an authority of that country, that authority shall, unless the contrary is proved, be deemed to be the appropriate authority of that country for the purposes of that provision.

(1) Any inspection certificate purporting to be signed by an inspector or other official in the performance of his duties under this Part is *prima facie* evidence of the facts stated in such certificate.

(2) The production by an inspector or other official of a certificate of his appointment purporting to be signed by the Minister is *prima facie* evidence of the facts stated therein and conclusive as to the authority of the inspector.

A certificate of a grader as to the grade of a dairy product is *prima facie* proof, in a prosecution for a violation of this Act, of the grade of the produce at the time when, according to the certificate, the product was graded and during the period for which the certificate is expressed to be valid.

In a prosecution for a violation of this Act, a document purporting to be the certificate of an analyst or a grader shall be received in evidence without proof of the signature of the person by whom it purports to be signed and without proof of his official position.

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A certificate of an analyst stating that he has examined the composition of a sample of a dairy product or other thing submitted to him by an inspector and stating the result of his examination is *prima facie* proof, in a prosecution for a violation of this Act, of the statements contained in the certificate.

In any prosecution under this Act or regulations thereunder, the certificate of grade of an inspector and the certificate of test or analysis of an official analyst on any official sample of seeds or plants received under the provisions of this Act, shall be accepted as *prima facie* evidence of the particulars of the said certificates as therein set out.

In every prosecution under this Act a certificate of analysis furnished by an analyst employed by the Government of Canada or by a province shall be accepted as *prima facie* evidence of the facts stated therein and of the authority of the person giving or issuing the certificate, without proof of the signature of the person appearing to have signed the certificate of his official character, and without further proof thereof.

In any prosecution under this Act a certificate as to the analysis of any feeding stuff signed or purporting to be signed by an official analyst is *prima facie* evidence of the facts stated in such a certificate and conclusive evidence of the authority of the person giving or making the same without any proof of appointment or signature.

(1) A certificate of analysis signed by an official analyst appointed under this Act is *prima facie* evidence of analysis therein set out.

(2) Where the person from whom the official sample is taken by an inspector and respecting which an analysis has been made disputes the correctness of such analysis, he may, within twenty days of the receipt of a certified copy of such analysis, notify the Minister in writing that he intends to present evidence to controvert the correctness of the analysis of the official analyst, stating in full the nature of such evidence.

(3) In the absence of such notice the certificate of the official analyst is final and conclusive evidence of the facts therein set out.

(4) Where the evidence so presented is such as in the opinion of the Minister would justify a further investigation the Minister may cause a second part of the same sample to be analysed by such official analyst as he may name, and the certificate of analysis of such official analyst shall be conclusive evidence of the facts therein set out.

Every inspection certificate is *prima facie* evidence of the facts therein stated and is receivable in evidence without proof of any signature or the official character of any person appearing to have signed it.

Every certificate of title granted under this Act is, except

- (a) in case of fraud wherein the owner has participated or colluded,
- (b) as against any person claiming under a prior certificate of title granted under this Act in respect of the same land, and
- (c) so far as regards any portion of the land, by wrong description of boundaries or parcels included in such certificate of title, so long as the same remains in force and uncalled under this Act,

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conclusive evidence in all courts as against Her Majesty and all persons whomsoever, that the person named therein is entitled to the land included in the same, for the estate or interest therein specified, subject to the exceptions and reservations implied under the provisions of this Act.

In any suit for specific performance brought by an owner of any land, for which a certificate of title has been granted, against a person who has contracted to purchase the land, without notice of any fraud or other circumstances that, according to this Act, would affect the right of the transferor, the duplicate certificate of title of the owner is evidence that the owner has a good and valid title to the land, for the estate or interest herein, mentioned or described.

The certificate of an inspector or an officer to the effect that an animal is affected with an infectious or contagious disease is *prima facie* evidence of the matter certified.

In any prosecution under this Act or the regulations a certificate as to the analysis of any maple product or alleged maple product or colourable imitation thereof signed or purporting to be signed by an official analyst is *prima facie* evidence of the facts stated in such certificate and conclusive evidence of the authority of the person giving or making the same without any proof of appointment or signature.

A certificate of analysis signed by an official analyst is *prima facie* evidence of the particulars of the analysis therein set out.

(i) *Certificate of facts*

For the purposes of this Act

- (a) a certificate issued by or on behalf of the appropriate authority of a country, stating that a body, contingent or detachment of the forces of that country is, or was at a time specified in the certificate, present in the United Kingdom, shall in any proceedings in any United Kingdom court be conclusive evidence of the fact so stated; and
- (b) where in any such proceedings it is admitted or proved (whether by means of a certificate under the foregoing paragraph or otherwise) that a body, contingent or detachment of the forces of a country is or was at any time present in the United Kingdom, it shall be assumed in those proceedings, unless the contrary is shown, that the body, contingent or detachment is or was at that time present in the United Kingdom on the invitation of Her Majesty's Government in the United Kingdom.

An averment in any process in proceedings under the customs or excise Acts

- (a) that those proceedings were instituted by the order of the Commissioners; or
- (b) that any person is or was a Commissioner, officer or constable, or a member of Her Majesty's armed forces or coastguard; or
- (c) that any person is or was appointed or authorized by the Commissioners to discharge, or was engaged by the orders or with the concurrence of the Commissioners in the discharge of, any duty; or

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- (d) that the Commissioners have or have not been satisfied as to any matter as to which they are required by any provision of the said Acts to be satisfied; or
- (e) that any ship is a British ship; or
- (f) that any goods thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid the seizure of those goods,

shall, until the contrary is proved, be sufficient evidence of the matter in question.

(1) For the purposes of this Part of this Act a certificate issued by or on behalf of the appropriate authority of a country, stating that at a time specified in the certificate a person so specified either was or was not a member of a visiting force of that country, shall in any proceedings in any United Kingdom court be sufficient evidence of the fact so stated unless the contrary is proved.

(2) For the purposes of this Part of this Act a certificate issued by or on behalf of the appropriate authority of a country, stating, as respects a person specified in the certificate,

- (a) that on a date so specified he was sentenced by a service court of that country to such punishment as is specified in the certificate, or
- (b) that he is, or was at a time so specified, detained in custody in pursuance of a sentence passed upon him by a service court of that country or pending or during the trial by such a court of a charge brought against him, or
- (c) that he has been tried, at a time and place specified in the certificate, by a service court of that country for a crime so specified,

shall in any proceedings in any United Kingdom court be conclusive evidence of the facts so stated.

(3) For the purposes of subsection (2) of section 3 of this Act a certificate issued by or on behalf of the appropriate authority of a country, stating in connection with any charge against a person of an offence against United Kingdom law, being a charge specified in the certificate, that his case can be dealt with under the law of that country, shall in any such proceedings as aforesaid be conclusive evidence of the fact so stated.

(4) Where a person is charged with an offence against United Kingdom law and at the time when the offence is alleged to have been committed he was a member of a visiting force, or a member of a civilian component of such a force, a certificate issued by or on behalf of the appropriate authority of the sending country, stating that the alleged offence, if committed by him, arose out of and in the course of his duty as a member of that force or component, as the case may be, shall in any such proceedings as aforesaid be sufficient evidence of that fact unless the contrary is proved.

In any prosecution for a violation of a regulation, a certificate stating that Her Majesty in right of Canada is the owner or occupant of the land described therein and purporting to be signed by

- (a) the Minister of Public Works or his Deputy, Assistant Deputy or Acting Deputy,

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- (b) the Minister of the department having the control and management of the lands or his Deputy, Assistant Deputy or Acting Deputy, or
- (c) the officer or person having custody of the documents of title or other appropriate records,

shall be received in evidence without proof of the signature or the official character of the person appearing to have signed the certificate, and without further proof thereof, and is *prima facie* proof that the lands belong to or are occupied by Her Majesty in right of Canada as the case may be.

In any action by any company to enforce payment of any call or interest thereon, a certificate under the seal of the company and purporting to be signed by any officer of the company to the effect that the defendant is a shareholder, that the call or calls have been made to enforce payment of which or of any interest thereon such action has been brought, and that so much is due by him and unpaid thereon, shall be received in all courts as *prima facie* evidence.

A certificate purporting to be signed by the Minister or his Deputy or by an official in his department stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given, is *prima facie* evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same.

Every certificate under this Act that any industrial design has been duly registered in accordance with the provisions of this Act, which purports to be signed by the Minister or the Commissioner of Patents shall, without proof of the signature, be received in all courts in Canada as *prima facie* evidence of the facts therein alleged.

In any trial, prosecution or other proceeding

- (a) a certificate purporting to be signed by the Chairman of the Board and setting forth the amount of allowance obtained and the portion thereof that remains unrepaid or unrecovered as of that day; and
- (b) a document purporting to be an adjudication of a District Authority or of the Board

is receivable in evidence as *prima facie* proof of the facts stated therein without proof of the signature or official character of any person appearing to have signed the certificate or document and without further proof thereof.

(j) *Certificate of Inspection*

The certificate of an inspector is, for the purposes of this Act, *prima facie* evidence in all courts of justice and elsewhere of the matter certified.

For the purposes of this Act, the certificate of an inspector or other officer appointed under this Act, or any mark applied under this Act, is *prima facie* evidence of the matter that it purports to establish.

An inspection certificate purporting to be signed by an inspector is *prima facie* evidence of the facts stated in such certificate and conclusive evidence

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of the authority of the person giving or making the same without any proof of appointment or signature.

A certificate of a veterinary inspector to the effect that an animal is or was affected with a disease specified in the certificate shall, for the purposes of this Act, be conclusive evidence in all courts of justice of the matter certified.

(k) *Certified Copy*

Except in any proceeding by *scire facias* or otherwise for the purpose of rescinding or annulling letters patent or supplementary letters patent issued under this Part, such letters patent or supplementary letters patent, or any exemplification or copy thereof certified by the Registrar General of Canada, shall be conclusive proof of every matter and thing therein set forth.

An affidavit of an officer of the Department of National Revenue, sworn before a Commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Minister or some person exercising the powers of the Minister or by or on behalf of a taxpayer, shall be received as *prima facie* evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way.

Certificates and copies of official papers, certified under the hand and seal of any of the principal officers of the Customs in Great Britain, or of any collector of colonial revenue in any of the British possessions, or of any British consul or vice-consul in a foreign country, and certificates and copies of official papers made pursuant to this Act or any Act in force in Canada relating to the Customs or revenue, shall be received as *prima facie* evidence.

The production of an original document relating to any bankruptcy proceeding or a copy certified by the person making it as a true copy thereof or by a successor in office of such person as a true copy of a document found among the records in his control or possession is *prima facie* evidence of the contents of such documents.

Every document purporting to be or to contain or to be a copy of an order, certificate or authority made or given by the Minister in pursuance of the provisions of this Order and purporting to be signed by the Minister shall be received as evidence of such order, certificate or authority without proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.

(l) *Consent*

A consent or certificate of the Commission, or a copy of a consent or certificate, resolution, regulation, special order, record, document, other proceeding of the Commission or other proceeding under this Act, purporting to be signed or certified under the hand of any Commissioner or the Secretary of the Commission, is receivable in evidence without proof of the signature or the official character of the person or persons appearing to have signed the same and without further proof thereof.

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(m) *Consents to prosecute*

A consent to institute proceedings purporting to be signed by an officer authorized under subsection (1) of section 72, and a certificate purporting to be signed by such an officer certifying as to the date on which evidence came to the knowledge of the Commission, shall be received in evidence without proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.

(n) *Death*

In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(o) *Declaration*

Any declaration made under this Act or under any Act heretofore in force may be proved in any legal proceeding by the production of the original declaration or of any copy thereof certified to be a true copy by the Minister or by any person authorized by him in that behalf, without proof of such authorization, and the production of the declaration or copy shall be evidence of the contents thereof and of the person therein named as declarant having made the declaration at the date therein mentioned.

(p) *Depositions*

Depositions or statements taken in a foreign state on oath, or on affirmation, where affirmation is allowed by the law of the state, and copies of such depositions or statements and foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Part.

(q) *Detention*

For the purposes of any legal proceedings within Canada a certificate under the hand of the officer commanding a United States force that a member of that force is being detained in either of the circumstances described in subsection (1) is conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a service court of the United States of America is conclusive evidence of that fact.

(r) *Determination*

In any court a copy of any determination under these regulations purporting to be certified by any officer or employee of the Wartime Prices and Trade Board shall be received as *prima facie* evidence of such determination without proof of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof.

(s) *Documents*

(1) Any document purporting to be certified by the Secretary as being a copy of any plan, profile, book of reference or other document deposited with the Board, or of any portion thereof, is, without proof of the signature

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of the Secretary, *prima facie* evidence of such original document, and that the same is so deposited, and is signed, certified, attested or executed by the persons by whom and in the manner in which, the same purports to be signed, certified, attested or executed, as shown or appearing from such certified copy; and also if such certificate states the time when such original was so deposited, that the same was deposited at the time so stated.

(2) A copy of any regulation, order or other document in the custody of the Secretary or of record with the Board, certified by the Secretary to be a true copy, and sealed with the seal of the Board, is *prima facie* evidence of such regulation, order or document, without proof of signature of the Secretary.

(3) A certificate purporting to be signed by the Secretary, sealed with the seal of the Board, is *prima facie* evidence of the facts therein stated without proof of the signature of the Secretary.

In any legal proceedings any document purporting to be

- (a) a document issued by a local education authority, and to be signed by the clerk of that authority or by the chief education officer of that authority or by any other officer of the authority authorized to sign it;
- (b) an extract from the minutes of the proceedings of the managers or governors of any county school or voluntary school and to be signed by the chairman of the managers or governors or by their clerk;
- (c) a certificate giving particulars of the attendance of a child or young person at a school or at a county college, and to be signed by the head teacher of the school or college; or
- (d) a certificate issued by a medical officer of a local education authority and to be signed by such an officer;

shall be received in evidence and shall, unless the contrary is proved, be deemed to be the document which it purports to be, and to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature, or official capacity, and any such extract or certificate as is mentioned in paragraph (b), (c) or (d) of this subsection shall be evidence of the matters therein stated.

A copy of, or extract from, any document issued or kept by or in the custody of the Commission under or for the purposes of the principal Act or this Act, being a copy or extract upon which is endorsed a certificate signed by an officer of the Commission stating that it is a true copy or extract, shall in all legal proceedings be admissible in evidence as of equal validity with the document in question, and a certificate purporting to be so signed shall, unless the contrary is proved, be deemed to be so signed.

A certificate of citizenship or a certificate of naturalization may be proved in any legal proceeding by the production of the original certificate or of any copy thereof certified to be a true copy by the officer or persons authorized to issue such certificate of citizenship or such certificate of naturalization or by any person authorized by such officer or person in that behalf, without proof of such authorization.

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An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Minister or some person exercising the powers of the Minister or by or on behalf of a taxpayer, shall be received *prima facie* evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way.

Any document or paper, written or printed, purporting to be a form authorized for use in the taking of a census, or the collection of statistics or other information, or to set forth any instructions relative thereto, which is produced by any person employed in the execution of this Act, as being such form or as setting forth such instructions, shall be presumed to have been supplied by the proper authority to the person so producing it, and is *prima facie* evidence of all instructions therein set forth.

Every document purporting to be an order, direction, demand, notice, certificate, requirement, decision, assessment, discharge of mortgage or other document purporting to have been executed under, or in the course of administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue for Taxation, or an officer authorized by regulation to exercise powers or perform duties of the Minister under this Act, shall be deemed to be a document signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by some person acting for him or Her Majesty.

Every document purporting to be a deportation order, rejection order, warrant, order, summons, direction, notice or other document over the name in writing of the Minister, Director, Special Inquiry Officer, immigration officer or other person authorized under this Act to make such document shall, in any prosecution or other proceeding under or arising out of this Act, be *prima facie* evidence of the facts contained therein and shall be receivable in evidence without proof of the signature or the official character of the person appearing to have signed the same unless called in question by the Minister or some other person acting for him or Her Majesty.

In any proceeding before the Board and in any action or proceeding under this Act, every written or printed document purporting to have been issued or authorized by the company, or any officer, agent, or employee of the company, or any other person or company for or on its behalf, shall, as against the company, be received as *prima facie* evidence of the issue of such document by the company and of the contents thereof, without any further proof than the mere production of such document.

(1) Every document purporting to be signed by the Minister, or by the Chief Commissioner and Secretary or either of them, or by an inspecting engineer, is, without proof of any such signature, *prima facie* evidence that such document was duly signed and issued by the Minister, the Board, or inspecting engineer, as the case may be.

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(2) If such document purports to be a copy of any regulation, order, direction, decision or report made or given by the Minister, the Board, or an inspecting engineer, it is *prima facie* evidence of such regulation, order, direction, decision or report.

Every document purporting to have been signed by any commissioner, assistant commissioner or any officer or employee of the Board in the course of the performance of his duties as such commissioner, officer or employee shall upon its production to any tribunal be *prima facie* evidence of its authenticity and of the facts therein stated on the authority of the commissioner, officer or employee by whom the same purports to have been signed.

(5) In any proceedings for an offence against these Regulations

- (a) the original or a copy of any sales slip, charge slip, invoice, voucher, book of account, bill, monthly statement, or other document whatsoever, which is proved on behalf of the prosecution to have been found in or produced from the possession of the accused or his agent or to have been issued by him or his agent and which records or purports to record the price, date, subject-matter or other particulars of a sale or purchase shall be *prima facie* evidence that a sale or purchase as indicated therein was made by or on behalf of the accused,
- (b) the original or a copy of any catalogue, price list, handbill, circular letter, pamphlet, card, poster, price-tag or price-marking, letter of quotation, tender, advertisement or other document whatsoever, which is proved on behalf of the prosecution to have been found in or produced from the possession of the accused or his agent or to have been issued or published by or on behalf of the accused, and which records or purports to record the price, date, subject-matter, or other particulars of an offer to sell shall be *prima facie* evidence that an offer to sell as indicated therein was made by or on behalf of the accused;
- (c) proof of an invitation for offers to buy shall be proof of an offer to sell.

In any proceedings in any Court or before any Justice taken in respect of any alleged breach of any statute, Order in Council or law respecting grain, including any Order of the Board thereunder, or any regulation in or under any such statute, Order in Council or law,

- (a) any order, licence or other document purporting to be made, given or issued by or on behalf of or under authority of the Board shall, if purporting to be signed or countersigned by an official, be received as *prima facie* evidence that such order, licence or other document was so made, given or issued;
- (b) any document purporting to be certified by an official to be a true copy of any order, licence or other document made, given or issued by or on behalf of or under authority of the Board shall be received as *prima facie* evidence that such order, regulation, instruction, licence or other document was so made, given or issued;

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- (c) the words “an official” in the foregoing two paragraphs shall mean...

Any document purporting to contain or to be a copy of any regulation, direction, or order of the Board and purporting to be signed by a member of the Board or by an officer thereof shall be accepted by any court as evidence of the regulation, direction, or order therein contained or of which it purports to be a copy.

Any document or paper, written or printed, purporting to be a form authorized for use in the taking of a census, or the collection of statistics or other information, or to set forth any instructions relative thereto, which is produced by any person employed in the execution of this Act, as being such form or as setting forth such instructions, shall be presumed to have been supplied by the proper authority to the person so producing it, and shall be *prima facie* evidence of all instruction therein set forth.

In any proceedings in any Court,

- (a) any document certified by the Chairman or Secretary to be a true copy of the minutes of any meeting of the Board or of any extract therefrom shall be received as conclusive evidence that any transaction or decision therein recorded was made or taken;
- (b) any order, licence or other document purporting to be made or issued by or on behalf of or under authority of the Board shall, if signed or countersigned by the Chairman or the Secretary, be received as conclusive evidence that such order, licence or other document was so made or issued;
- (c) any document certified by the Chairman or Secretary to be a true copy of any order, licence or other document made or issued by or on behalf of or under authority of the Board shall be received as conclusive evidence that such order, licence, or other document was so made or issued;
- (d) any document purporting to be signed or countersigned by the Chairman or Secretary of the Board shall be received in evidence without proof of the signature or official character of the Chairman or the Secretary as the case may be.

(t) *Documents, Receipt of*

Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of National Revenue, sworn before a Commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by such person, shall be received as *prima facie* evidence that in such case that person did not make the return, statement, answer or certificate, as the case may be.

Where by any regulation or order provision is made for any person to file, forward or deliver any document with or to the Board or an Administrator

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or any office or officer of the Board, an affidavit of an officer or other employee of the Board sworn before any commissioner or other person authorized to administer oaths, that he has charge of the appropriate records and that after careful examination and search of such records he has been unable to find in any given case that any such document has been filed with or received by him, shall be received as *prima facie* evidence that in such case no document was so filed, forwarded or delivered.

(2) Where, by any Order in Council or order, provision is made for any person to file, forward or deliver any document with or to the Board, a Controller or the Priorities Officer, or any agent or representative of any of them, an affidavit of any officer or employee of the Department of Munitions and Supply of the Government of Canada or any representative of any such officer, sworn before any Commissioner or other person authorized to administer oaths, that he has charge of the appropriate records and that after careful examination and search of such records he has been unable to find in any given case that any such document has been filed with or received by him, shall be received as *prima facie* evidence that no such document was so filed, forwarded or delivered.

(3) In any Court, the affidavit of any officer or employee of the Department of Munitions and Supply of the Government of Canada, or any representative of any such officer, sworn before any commissioner or other person authorized to administer oaths, that he has charge of the appropriate records and that an annexed document is a document filed with or received by the Board, a Controller or the Priorities Officer, or by any office, officer or representative of any of them shall be received as *prima facie* evidence that such document has been so filed or received.

A certificate purporting to be signed by a Registrar, Postmaster or person authorized by a Registrar or Postmaster to receive notices under this section, that a notice has or has not been delivered under this section to him or any other person in the office in which he is employed shall be evidence of the statements contained therein.

(u) Facts

In any prosecution under this Act a document purporting to be a certificate signed by the Master or any Assayer of the Royal Canadian Mint is *prima facie* evidence of the facts stated therein and is receivable in evidence without proof of any signature or the official character of any person appearing to have signed the same, and without further proof thereof.

In any action by any company to enforce payment of any call or interest thereon, a certificate under the seal of the company and purporting to be signed by any officer of the company to the effect that the defendant is a shareholder, that the call or calls have been made to enforce payment of which or of any interest thereon such action has been brought, and that so much is due by him and unpaid thereon, shall be received in all courts as *prima facie* evidence of the facts purporting to be stated therein.

(v) Foreign Law

Evidence of any such law or ordinance of a foreign country may be given by the production of a copy thereof purporting to be

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- (a) printed by the government printer or at the government printing office of such foreign country, or contained in a volume of laws or ordinances of such country purporting to be so printed, or
- (b) certified to be true by some officer of state of such foreign country who also certifies that he is the custodian of the original of such law or ordinance, in which case no proof shall be required of the handwriting or official position of the person so certifying.

(w) *Forms*

Every form or notice purporting to be a form or notice prescribed by the Minister shall be deemed to be a form or notice prescribed by the Minister under this Act unless called in question by the Minister or some person acting for him or for Her Majesty.

Every form purporting to be a form prescribed or authorized by the Minister shall be deemed to be a form prescribed by order of the Minister under this Act unless called in question by the Minister or some person acting for him or for Her Majesty.

(x) *Invoices*

The production or proof of the existence of any invoice, account, document or paper made or sent by any person or by his authority, wherein the goods or any of them are charged or entered at or mentioned as bearing a greater price than that set upon them in any other invoice, account, document or paper intended to cover the same goods or any part thereof, made or sent by the same person or by his authority, or in which the goods or any of them are given a different name or description from that stated in any other such invoice, account, document or paper, or in which the goods are falsely described, shall be *prima facie* evidence that the invoice, account, document or paper wherein is stated a lesser price, or the false or incorrect name or description of the goods, was intended to be fraudulently used for Customs purposes; but such intention or the actual fraudulent use of such invoice, account, document or paper may be proved by any other legal evidence.

Copies of invoices or extracts from invoices duly certified by the collector or other proper officer, bearing the stamp of the Custom-house at which such invoices are filed, shall be considered and received as *prima facie* evidence of the contents thereof.

(y) *Judicial notice*

Judicial notice shall be taken of all orders or regulations made under this Act without such orders or regulations being specially pleaded or proven.

The publication in the *Canada Gazette* of an extradition arrangement or an Order in Council is evidence of the arrangement or order, and of the terms thereof, and of the application of this Part, pursuant and subject thereto; and the court or judge shall take judicial notice, without proof, of such arrangement or order, and the validity of the order and the application of this Part, pursuant and subject thereto, shall not be questioned.

(z) *Letters Patent*

In any action or other legal proceeding, the notice in the *Canada Gazette* of the issue of letters patent or supplementary letters patent under this Part

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shall be *prima facie* proof of all things therein contained, and on production of such letters patent or supplementary letters patent or of any exemplification or copy thereof certified by the Registrar General of Canada, the fact of such notice and publication shall be presumed.

(aa) Liquor

(1) Evidence that a transaction in the nature of a sale of intoxicating liquor took place shall in any proceedings relating to an offence under this Act, be evidence of the sale of the liquor without proof that money passed.

(2) Evidence that consumption of intoxicating liquor was about to take place shall in any such proceedings as aforesaid be evidence of the consumption of intoxicating liquor without proof of actual consumption.

(3) Evidence that any person, other than the occupier of licensed premises or a servant employed in licensed premises, consumed or intended to consume intoxicating liquor in the premises shall be evidence that the liquor was sold by or on behalf of the holder of the justices' licence to that person.

(ab) Mailing

For the purposes of these regulations and of any proceedings taken thereunder, any notice or other communication sent through Her Majesty's mails pursuant to these Regulations shall be presumed, until the contrary is proven, to have been received by the addressee within eight clear days of the posting thereof and a certificate of such posting purporting to be signed by a Selective Service Officer shall be *prima facie* proof thereof.

(1) On the prosecution of any offence against this Act, whether summarily or on indictment, evidence that any article is in the course of transmission by post, or has been accepted on behalf of the Postmaster General for transmission by post, shall be sufficient evidence that the article is a postal packet.

(2) Where the consent or order of the Postmaster General is required to or for any prosecution, an instrument purporting to be executed by him or on his behalf by an officer of the Post Office duly authorized by or under section 83 of this Act and stating that the prosecution has been consented to or ordered by the Postmaster General shall be sufficient proof of that fact, unless the contrary is shown.

(1) For the purposes of these Regulations and of any proceedings taken thereunder every order or notice required to be given by registered post and every other communication sent through Her Majesty's mails shall be presumed, until the contrary is proven, to have been received by the addressee within eight clear days of the posting of such registered letter or any such other communication.

(2) A registered letter or any other communication posted by a Registrar, if undelivered or unclaimed at the end of the number of days indicated on the envelope by the Registrar who posted such letter or communication shall be returned by the Post Office to such Registrar.

For the purpose of these Regulations and of any proceedings taken thereunder, any notice or other communication sent through Her Majesty's mails

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shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Department of National Revenue sworn before a commissioner or other person authorized to take affidavits setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed (indicating such address) and that he identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the request, notice or demand, shall be received as *prima facie* evidence of the sending and of the request, notice or demand.

(ac) Maps, Plans

A document purporting to be certified on behalf of the surveying authority to be a copy of a definitive map or statement or of any part thereof shall be receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.

(ad) Minutes

In any proceedings in any court

- (a) any document certified by the chairman or secretary of the Board to be a true copy of the minutes of any meeting of the Board or of any extract therefrom shall be received as *prima facie* evidence that any transaction, determination or decision therein recorded was made or taken;
- (b) any document certified by the chairman or secretary of the Board to be a true copy of any permit or instruction made or issued by or on behalf of or under the authority of the Board shall be received as *prima facie* evidence that such permit or instruction or other document was so made or issued; and
- (c) any document purporting to be signed by the chairman or secretary of the Board shall be received in evidence without proof of the signature or official character of the said chairman or secretary, as the case may be.

(ae) Name

Where in any certificate issued for the purposes of this Act reference is made to a person by name, and in any proceedings in a United Kingdom court reference is made to a person by that name (whether as a party to the proceedings or otherwise), the references in the certificate and in the proceedings respectively shall, unless the contrary is proved, be deemed to be references to one and the same person.

(af) Notice

An affidavit of an officer of the Department of National Revenue, sworn before a Commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows

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that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, shall be received as *prima facie* evidence of the statements contained therein.

(ag) Oath

Any document purporting to have subscribed thereto the signature of any person in testimony of any oath or affidavit being administered or taken before him, and containing in the jurat or attestation a statement of the facts required to be stated therein by an order under this section, shall be admitted in evidence without proof of the signature being the signature of that person or of the facts so stated.

(ah) Official

Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Department of National Revenue, it is not necessary to prove his signature or that he is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

(ai) Orders

Any document purporting to contain or to be a copy of any rule, decision, direction or order of the Board, and purporting to be signed by a member of the Board, or the chief executive officer thereof, shall be accepted by any court as evidence of the rule, decision, direction, order or other matter therein contained of which it purports to be a copy.

In any proceedings in any Court or before any Justice of the Peace taken in respect of any alleged contravention of this Act or of a regulation or order, a document purporting to be certified by a member of the Board as a true copy of any order, licence or document made, given or issued by or on behalf of or under authority of the Board, shall be received as evidence that the order, licence or document of which it purports to be a copy was so made, given or issued and of such order, licence or document.

In any prosecution under subsection (1) evidence of an order of the Board may be given by the production of a copy thereof purporting to be certified to be a copy by the Chairman, Vice-Chairman, Secretary or other official of the Board.

An Order of the Governor in Council declaring any market, railway yard, stock yard, pen, wharf, steamship, steam or other vessel, railway car or other vehicle to be infected, or of the Minister declaring a place to be an infected place, or a copy of the declaration of the inspector certified by him, a notice of which has been delivered as required by this Act, shall be *prima facie* evidence of the existence of disease, or of the suspicion of such disease, and other matters to which the order or declaration relates.

Any document purporting to contain any order made pursuant to these regulations and purporting to be signed by the Minister or any person who is stated therein to be authorized by the Minister to make such order shall be

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prima facie proof of such order and of the authority of such person to make it.

(aj) *Package*

Proof that a package containing a dairy product bore a name and address purporting to be the name and address of the person by whom it was packed or a registered number purporting to be the registered number of the establishment where it was packed is *prima facie* proof, in a prosecution for a violation of this Act, that the dairy product was packed and that the package was marked by the person whose name and address appeared on the package or by the person operating the establishment whose registered number appeared on the package, as the case may be.

(ak) *Patents*

In any action or proceeding respecting a patent of invention authorized to be had or taken in Canada under the provisions of this Act a copy of any patent granted in any country, or any official document connected therewith, purporting to be certified under the hand of the proper officer of the government of the country in which such patent has been obtained, may be produced before the court or a judge thereof, and the copy of such patent or document purporting to be so certified may be received in evidence without production of the original and without proof of the signature or of the official character of the person appearing to have signed the same.

(al) *Payment*

Any document purporting to be a receipt in the prescribed form and purporting to be signed on behalf of the bank shall be evidence of the payment by the Minister to the bank under this Act in respect of the loan therein mentioned and of the execution of such document on behalf of the bank.

A document purporting to be a receipt executed under subsection (1) in the form prescribed by the regulations and purporting to be signed on behalf of a bank or an approved instalment credit agency is evidence of the payment by the Corporation to the said bank or agency under this Part in respect of the loan therein mentioned, and of the execution of the said document on behalf of the said bank or agency.

(am) *Postal packets*

In any criminal proceedings instituted, whether before or after the commencement of this Act, during the war period

- (a) a certificate certifying that any document or documents annexed to, or otherwise identified by, the certificate constituted or formed part of a postal packet which was examined by an authorized examiner on a date specified therein; or
- (b) a certificate certifying that any photographic copy or copies so annexed or identified is or are a true copy or true copies, made by an authorized photographer, of any document or documents which constituted or formed part of such a postal packet as aforesaid;

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shall, if purporting to be signed by a person being a competent officer, be admissible as evidence of the matters so certified, without proof of the signature being the signature of that person or of his official capacity.

(an) Proclamation

Notice of a consent under either of the two last preceding sections and of the terms thereof shall be given by proclamation of the Governor in Council published in the *Canada Gazette* and such proclamation shall be conclusive evidence of such consent and of the terms thereof.

(ao) Registers

Entries made in any register in pursuance of this Act or under any Act heretofore in force may be proved by such copies and certified in such manner as may be directed by the Minister, and the copies of any such entries shall be evidence of any matters, by this Act or by any regulation of the Governor in Council or of the Minister, authorized to be inserted in the register.

(1) Every register of copyrights under this Act shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entries therein or extracts therefrom, certified by the Commissioner of Patents or the Registrar of Copyrights and sealed with the seal of the Copyright Office, shall be admissible in evidence in all courts without further proof or production of the originals.

(2) A certificate of registration of copyright in a work shall be *prima facie* evidence that copyright subsists in the work and that the person registered is the owner of such copyright.

(1) A register of licences shall be received in evidence of the matters required by this or any other Act to be entered in it.

(2) Any document purporting to be certified by the clerk to any licensing justices to be a true copy of an entry in the register of licences kept by him shall be received as evidence of the matters contained in the entry.

(1) Any document purporting to be a print of the Annual Register of Pharmaceutical Chemists printed and published by authority of the registrar in any year shall, at any time before the publication of the said Annual Register for the succeeding year, be admissible in any proceedings as evidence that any person named therein is, and that any person not named therein is not, a registered pharmaceutical chemist.

(2) Any such certificate as is mentioned in the last foregoing section shall be admissible in any proceedings as evidence that the person named therein as a registered pharmaceutical chemist is a registered pharmaceutical chemist.

(ap) Reports, returns, etc.

Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of National Revenue, sworn before a Commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular

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day, shall be received as *prima facie* evidence that it was filed or made on that day and not prior thereto.

A certificate purporting to be signed by the Minister or his Deputy or by an official in his department stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was to be received or given, shall be *prima facie* evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same.

Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular day, shall be received as *prima facie* evidence that it was filed or made on that day and not prior thereto.

Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case the return, statement, answer or certificate, as the case may be.

(aq) Seal

(2) The seal of the Minister shall be officially and judicially noticed, and every document purporting to be an instrument made or issued by the Minister and to be sealed with the seal of the Minister authenticated in the manner provided by this section, or to be signed by a secretary of the Ministry or any person authorized as aforesaid, shall be received in evidence and be deemed to be so made or issued without further proof, unless the contrary is shown.

(3) A certificate signed by the Minister that any instrument purporting to be made or issued by him was so made or issued shall be conclusive evidence of that fact.

Any document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act shall, if it appears to be sealed with the seal of any court having jurisdiction in bankruptcy, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings.

All documents which require execution by the Director in his corporate capacity shall be deemed validly executed if the said seal is affixed and the name of the Director is signed thereto, the whole in the presence of one other person who has subscribed his name as witness; and every document which purports to be impressed with the seal of the Director and to be sealed and signed in the presence of a witness by the Director shall be admissible in evidence in all courts in Canada without proof of any such seal or of such sealing or signing.

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Such official seal or seal of the court or such certificate of a diplomatic or consular officer shall be *prima facie* evidence of the execution of the instrument; and the instrument with such seal or certificate affixed or attached thereto shall be admissible as evidence in any action or proceedings brought under this Act without further proof.

4. Witnesses

(1) The Board may order that any person resident or present in Canada may be examined upon oath before, or make production of books, papers, documents, or articles to the Board, or any member of the Board, or before or to any officer of the Board, or before or to any other person named for the purpose by the order of the Board, and may make such orders as seem proper for securing the attendance of such witness and his examination, and the production by him of books, papers, documents, or articles, and the use of the evidence so obtained, and otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment of disobedience thereof.

(2) No person shall be compellable, against his will, to attend for such examination or production at any place outside the province in which he is served with the order of the Board for the purpose, and every person attending pursuant to subpoena shall, in the discretion of the Minister or the Board, be entitled to receive fees and allowances as if summoned to appear before the Exchequer Court.

(3) The Board may issue commissions to take evidence in a foreign country, and make all proper orders for the purpose, and for the return and use of the evidence so obtained.

Subject to subsections (3), (4) and (5) of section 4 of the *Canada Evidence Act*, the wife or husband of a person charged with an offence against the provisions of subsection (1) of this section in respect of a false statement or misrepresentation as to his or her dependent under this Act, is a competent and compellable witness for the prosecution without the consent of the person charged.

Every person who is summoned by a Conciliation Board or a member thereof and duly attends as a witness shall be entitled to an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits in the superior courts in the province where the inquiry is being conducted, and in any event, he shall be entitled to not less than four dollars per day.

(1) A Dominion Land Surveyor may, in carrying out a survey of lands under this Act, if he reasonably believes that any person may have knowledge on any matter relating to the survey,

- (a) request such person to appear before him as a witness;
- (b) apply to a justice of the peace for a subpoena compelling such person to appear before the surveyor to give evidence and to bring such documents as may be specified in the subpoena; and

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- (c) take evidence from any person requested or compelled to appear before him under an oath or affirmation to be administered by the surveyor.

(2) Every justice of the peace may, upon application by a Dominion Land Surveyor supported by an affidavit by him setting out the reason for requiring the attendance of a witness, issue the subpoena referred to in subsection (1).

(3) A subpoena under this section shall either be personally served upon the person named therein or left with an adult person at his residence and shall state the time and place at which the hearing before the surveyor will be held.

(4) A Dominion Land Surveyor may tender to a witness under this section such conduct money as will in the opinion of the Dominion Land Surveyor compensate the witness for his reasonable expenses in attending before him and, in the event of a dispute as to the amount, shall refer the matter to a justice of the peace whose decision therein shall be final.

(5) Where a person named in a subpoena refuses or fails to appear before a Dominion Land Surveyor at the time and place named in the subpoena, the Dominion Land Surveyor may apply to a justice of the peace for a warrant against such person and the justice of the peace may issue such warrant.

(1) The commissioner or commissioners may, under his or their hand or hands, issue a subpoena or other request or summons, requiring and commanding any person therein named to appear at the time and place mentioned therein, and then and there to testify to all matters within his knowledge relative to the subject-matter of such investigation, and to bring with him and produce any document, book, or paper that he has in his possession or under his control relative to any such matter as aforesaid; and any such person may be summoned from any part of Canada by virtue of such subpoena, request or summons.

(2) Reasonable travelling expenses shall be paid to any person so summoned at the time of service of the subpoena, request or summons.

Every person who

- (a) being required to attend in the manner in this Part provided, fails, without valid excuse, to attend accordingly;
- (b) being commanded to produce any document, book or paper, in his possession or under his control, fails to produce the same;
- (c) refuses to be sworn or to affirm, as the case may be; or
- (d) refuses to answer any proper question put to him by a commissioner, or other person as aforesaid;

is liable, on summary conviction before any police or stipendiary magistrate, or judge of a superior or county court, having jurisdiction in the county or district in which such person resides, or in which the place is at which he was so required to attend, to a penalty not exceeding four hundred dollars.

Where any person so summoned refuses to be sworn or to make answer to any question put to him by the commissioners holding any such inquiry

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touching the matters in question, or to produce and show to such commissioners any papers, books, deeds or writings in his possession or under his control, which such commissioners deem necessary to be produced, or if any person is guilty of a contempt of the commissioners, or their office, the commissioners shall have the same powers, to be exercised in the same way, as any such court or judge, under like circumstances arising in the course of proceedings in an election petition under the *Dominion Controverted Elections Act* might, by law, exercise in that behalf.

(1) The commissioners may, by a summons under their hands and seals or under the hand and seal of any one of them, require the attendance before them, at a place and at any reasonable time specified in the summons of any person whose evidence they may think material to the subject-matter of the inquiry, and require any person to bring before them such books, papers, deeds and writings as appear necessary for arriving at the truth of the matters to be inquired into.

(2) All such persons, upon the service on them of any such summons, shall attend the commissioners, as required by such summons, and shall answer all questions put to them by the commissioners touching the matters to be inquired into and shall produce all books, papers, deeds and writings required of them and in their custody or under their control according to the tenor of the summons. All witnesses are entitled to be paid, in the first instance, by the party by whom they are summoned, fees or conduct money as in an ordinary action in the court.

Where at any time after the presentation of an election petition it is made to appear to the court or the trial judges that any witness intends to leave Canada and cannot attend the trial of an election petition, or that for any other reason it is desirable in the interest of justice that the examination of a witness be proceeded with forthwith, then on application to the court on notice to the parties to the petition, the court may grant an order for the examination of such witness at a time and place and before a person to be named in such order, and the witness may thereupon be examined touching the matter complained of in the petition, due notice of such time and place being given to the parties to the petition, who may, by their respective counsel, attend such examination, and examine and cross-examine such witness; and such examination shall be reduced to writing and signed by such witness, and when duly returned by the examiner, and purporting to be certified by the examiner, may be used by either party to the petition on the trial thereof.

(1) The Board may order that any witness resident or present in Canada may be examined upon oath before, or make production of books, papers, documents or articles to, any one member of the Board, or before or to any officer of the Board, or before or to any other person named for the purpose by the order of the Board, and may make such orders as seem to it proper for securing the attendance of such witness and his examination, and the production by him of books, papers, documents, or articles, and the use of the evidence so obtained, and otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas

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to witnesses or punishment of disobedience thereof; no person is compellable, against his will, to attend for such examination or production at any place outside the province in which he is served with the order of the Board for the purpose.

(2) The Board may issue commissions to take evidence in a foreign country, and make all proper orders for the purpose, and for the return and use of the evidence so obtained.

(1) The Board has the power of summoning before it any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and to produce such documents and things as the Board deems requisite.

(2) The Board shall give reasonable opportunity to persons who may not have been summoned to appear before it and give evidence upon oath or solemn affirmation as aforesaid, on any matter relevant to an inquiry then being held by the Board.

(3) No person is compellable, against his will, to attend to give evidence or to produce documents or other things, at any place outside of the province in which he is served with the summons or other process issued for the purpose of an inquiry under this Act.

(4) Every person summoned to attend, pursuant to the provisions of this section, shall, in the discretion of the Board or a member of the Board, as the case may be, receive the like fees and allowances for so doing as if summoned to attend before the Exchequer Court.

(5) The Board has the same power to enforce the attendance of witnesses, and to compel them to give evidence, as is vested in any court of record in civil cases.

(6) The Board is a court of record, and shall have an official seal, which shall be judicially noticed.

(7) One member has power to conduct any inquiry under subsection (1) and subsection (2) of section 4 and may, for the purposes of such inquiry, exercise the powers conferred upon the Board by subsections (1) and (5) of this section.

(8) Two members have the power to conduct any inquiry under subsections (3), (4) and (5) of section 4 and may, for the purposes of such inquiry, exercise the powers conferred upon the Board by subsections (1) and (5) of this section.

(9) For the purposes of any inquiry under this Act, the Board may obtain information that in its judgment is authentic, otherwise than under the sanction of an oath, or affirmation, and use and act upon such information.

(10) Should evidence or information that is in its nature confidential, relating to the business or affairs of any person, firm or corporation, be given or elicited in the course of any inquiry, the evidence or information shall not be made public in such a manner as to be available for the use of any business competitor or rival of the person, firm or corporation, respectively, but this subsection does not apply to an inquiry under subsection (3) of section 4; any person who violates any of the provisions of this subsection is

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guilty of an offence and liable, on summary conviction, to a penalty not exceeding one thousand dollars or not more than twelve months' imprisonment.

(11) Inquiries under this Act shall, whenever practicable, be conducted at some suitable place in the City of Ottawa, but the Board may, in its discretion, conduct such inquiries, either in whole or in part, in any other place in Canada, and, with the consent of the Minister, in any place outside of Canada.

(12) The Board shall hold its sessions and conduct its proceedings in such manner as may seem to it most convenient for the speedy and efficient discharge of its duties, and may make such rules and regulations, as it may deem expedient for the conduct of its proceedings, not inconsistent with the provisions of this Act; such rules and regulations shall be published in the *Canada Gazette* immediately after the promulgation thereof.

(13) This section, except subsections (3), (7) and (8), applies in respect of an appeal to the Board pursuant to any other Act or regulation thereunder as if the appeal were an inquiry within the meaning of this Act.

(1) The Minister may send for and examine, on oath, all such persons as he deems necessary, respecting any matter upon which his action is required, and may cause such persons to bring with them such papers, plans, books, documents and things as it is necessary to examine with reference to such matter, and may pay such persons a reasonable compensation for their time and disbursements.

(2) Such persons shall comply with the summons of the Minister, after due notice; and every person so summoned who neglects or refuses to attend and be examined shall incur a penalty of twenty dollars.

In any action, suit, proceeding or contestation under this Act, the court may order the issue of a writ of *subpoena ad testificandum* or of *subpoena duces tecum*, commanding the attendance, as a witness, of any person who is within Canada.

The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions in the superior courts in the same province, may be allowed to such person by a certificate under the hand of the trial judges or of the clerk of the court; and such expenses, if the witness was called and examined by the trial judges, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed costs of the party calling the witness, and shall be taxed against such party interested in the trial of such petition, as the trial judges determine. Witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit, as in cases within the jurisdiction of the superior courts in the same province.

Every person who is summoned by the Board or a Conciliation Board or Industrial Inquiry Commission and duly attends as a witness shall be entitled to an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits in the superior court in the province where the inquiry is being conducted, and in

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any event, he shall be entitled to not less than four dollars for each day he so attends.

(4) Reasonable travelling expenses shall be paid to any person so summoned at the time of service of the subpoena, request or summons.

(5) Everyone who

(a) being required to attend in the manner in this section provided fails, without valid excuse, to attend accordingly;

(b) being commanded to produce any document, book or paper, in his possession or under his control, fails to produce the same;

(c) refuses to be sworn or to affirm, as the case may be; or

(d) refuses to answer any proper question put to him by such officers;

is, on summary conviction before any police or stipendiary magistrate, or judge of a superior or county court, having jurisdiction in the county or district in which such person resides, or in which the place is at which he was so required to attend, liable to a penalty not exceeding four hundred dollars.

5. Miscellaneous

Every person about to export gold from the Territory shall upon demand produce to any peace officer a certificate from the Controller of the Territory or person authorized by the Controller under subsection (3) of section 85 certifying that the royalty imposed by section 85 with respect to such gold has been paid and failure to produce the certificate upon such demand is *prima facie* evidence that the royalty has not been paid.

The absence of mention in the minutes of any meeting of contributors, creditors, shareholders or members under this Act, of the production of the liquidator's bank passbook, is *prima facie* evidence that such passbook was not produced at such meeting.

The judge shall receive upon oath, or affirmation, if affirmation is allowed by law, the evidence of any witness tendered to show the truth of the charge of the fact of the conviction.

The Board shall, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry of any inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, have all such powers, rights and privileges as are vested in a superior court of record.

The Minister shall have power to appoint a person or persons to hear and receive evidence with respect to any matter pertaining to the Department or the procedure of the Department under this Act, and such person or persons shall have authority to administer oaths and to hear and receive evidence under oath and to take affidavits in any part of Canada.

The Board and each member thereof may receive and accept such evidence and information on oath, affidavit or otherwise as in its or his discretion it or he may deem fit and proper whether admissible as evidence in a court of law or not.

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In any prosecution under this Act evidence that any thing bears the words "Post Office", "Canada Post Office", "Canada Mail" or any similar expression is *prima facie* proof that the thing was established or authorized for use in connection with the Canada Post Office under the authority of this Act.

CHAPTER VI

PUBLIC BOARDS AND CORPORATIONS

1. General Considerations

Nowadays many boards and corporations are established in order to carry on some duty or function for or on behalf of the government. In almost every session of Parliament a new one is established. They are difficult to classify. Each has its own peculiarities and it is frequently impossible to define accurately its legal position, or to state clearly why this form of administration was chosen over another.

They differ as to function. Some are purely judicial, others are quasi-judicial, others are quasi-judicial with some administrative functions; yet others are purely administrative with no judicial functions; and all of them may or may not have some measure of legislative authority.

They also differ in character. Some are corporate bodies, some are not. Some are completely independent of all governmental control, and others are completely subject to governmental control, and every in-between shade may be found. They may be "agents" of the Crown, or "instrumentalities" of the government for some purposes but not for others.

In most cases a draftsman's instructions will indicate the kind of creature he is to provide for, and fortunately he need not concern himself with motives. There are, however, a number of points that he must keep in mind and upon which he should have definite instructions.

1. Should the board or other agency be a corporation or not.
2. Should it be a legal agent of the state, so that its employees are state employees and the state is liable for the contracts made or torts committed by the employees.
3. Should the board have authority to appoint its own staff, or should the staff be supplied by the normal public service machinery, and, in either event, are the employees to be subject to superannuation and other conditions of employment applicable to the public service.
4. How will the board be financed and is it to have share capital. Will the board have revenues, and, if so, can they be expended without further appropriation by Parliament. Will it require financial assistance out of public funds, by way of loan, grant or otherwise.
5. Will the board enter into contracts or other legal relationships, and will it own property. To what extent will it have power to deal with its property.

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6. Is the board to be subject to the direction and control of the executive branch of government, and, if so, to what extent.
7. Are the functions of the board to be legislative, judicial or administrative, or a mixture of these. If legislative, is there to be any control over its regulations, such as approval by a Minister; if judicial, are its decisions subject to review or appeal; if administrative, is it to be subject to executive control and, if so, only as to policy or also as to details of administration.
8. To what extent should reports of its activities be made to a Minister and through him to Parliament.
9. What are its objects, purposes and powers to be and do they duplicate or conflict with the functions of some government department.
10. Are there to be penalties for failure to comply with orders, directions or regulations of the board.

It has become the practice in Canada to state expressly in the statute whether a corporation is or is not an agent of Her Majesty, and what its position is in the courts. Standard clauses for this will be found below.

Authority to make by-laws or regulations for the violation of which a penalty is or may be prescribed is usually not conferred unless the regulations are subject to prior approval of the Governor in Council.

The *Financial Administration Act* contains important financial provisions that are applicable to all so-called Crown corporations unless there are special overriding provisions in the individual incorporating Act. The *Crown Liability Act* is also applicable to those boards, etc., that are for all purposes agents of the Crown.

Internal rules of procedure are usually left to the board or corporation itself.

If the board or corporation is to be completely subject to governmental control, a provision is inserted to the effect that it must comply with any directions given by a Minister or the Governor in Council. If control is only partial, specific matters are made subject to control. If there is to be no governmental control, the Act should be free of provisions from which control may be inferred.

2. Establishment of Board or Corporation

The agency is usually created by the statute; that is to say, it springs into existence the moment the statute becomes law and no further steps to establish or incorporate are required. The words *there shall be* are frequently used to create the agency². Another formula is *there is hereby established*. The *hereby* is perhaps unnecessary, but it does emphasize that the board or corporation is established by the enactment of the statute.

2. See Book One, Ch. II.

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The establishment section may include also a statement of the membership of the agency, and, if it is to be a corporation, also an indication that it is. Tenure of office of members is sometimes also included in the one sentence, but, in many cases, it may be preferable to deal separately with tenure of office and other matters pertaining to membership. There is a tendency to put too much into the opening section.

The following examples are taken from the statutes without change. They all establish the agency, but in many instances other provisions are included in the same sentence.

There shall be a board to be known as the Air Transport Board consisting of three members appointed by the Governor in Council.

There shall be a board to be called the Agricultural Products Board consisting of not less than three and not more than seven members appointed by the Governor in Council.

There shall be a Commission called the Public Service Commission, consisting of a Chairman and two other members to be appointed by the Governor in Council.

There shall be constituted a Board to be called "The Army Benevolent Fund Board" consisting of five members appointed by the Governor in Council of whom one was nominated by the Canadian Legion of the British Empire Service League and one by the National Council of Veterans Associations in Canada; no member of the Board shall hold or occupy a position in the public service of Canada.

There shall be a Commission to be known as the Restrictive Trade Practices Commission consisting of not more than three members appointed by the Governor in Council.

There shall be a board called the Treasury Board, consisting of the Minister of Finance, who is the Chairman, and any five members of the Queen's Privy Council for Canada, who may be nominated from time to time by the Governor in Council.

A Board to be called the Historic Sites and Monuments Board of Canada is hereby established consisting of twelve members as follows:

- (a) the Dominion Archivist,
- (b) the Chief Curator of the National Museum of Canada, and
- (c) one representative for each of the ten provinces of Canada, to be appointed by the Governor in Council.

There shall be a body to be called "The Fisheries Research Board of Canada" which shall be under the control of the Minister.

There is hereby constituted an Income Tax Appeal Board to be appointed by the Governor in Council, consisting of the following members, namely, a Chairman and not less than two or more than four other members of whom one may be appointed as Assistant Chairman.

There shall be a labour relations Board to administer Part I which shall be known as the Canada Labour Relations Board and shall consist of a Chairman, and such number of other members as the Governor in Council may

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determine, not exceeding eight, consisting of an equal number of members representatives of employees and employers.

There shall be a Board to be known as the Merchant Seaman Compensation Board consisting of three members appointed by the Governor in Council.

There shall be a National Film Board, consisting of the Commissioner, who shall be Chairman, and eight other members to be appointed by the Governor in Council, three of whom shall be selected from the public service or the Canadian Forces, and five of whom shall be selected from outside the public service and Canadian Forces.

There shall be a board to be known as the Salt Fish Board consisting of three members appointed by the Governor in Council.

There shall be an Agricultural Prices Support Board under the direction of the Minister, consisting of three members, including a chairman and a vice-chairman, to be appointed by the Governor in Council to hold office during pleasure.

There is hereby constituted a body corporate to be called the Atomic Energy Control Board for the purposes hereinafter set out and with powers exercisable by it only as an agent of Her Majesty.

There shall be a Corporation to be known as the Canadian Broadcasting Corporation which shall consist of a board of eleven governors appointed by the Governor in Council and chosen to give representation to the principal geographical divisions of Canada.

There is hereby established, for the purposes set forth in section 4, a corporation to be known as the Canadian Commercial Corporation consisting of a President appointed by the Governor in Council and holding office during pleasure and not more than nine or less than five directors all of whom shall be appointed by the Governor in Council and hold office during pleasure.

There shall be a board, known as the Canadian Farm Loan Board, which shall consist of not less than three nor more than five members who shall be appointed by the Governor in Council, on such terms and conditions as the Governor in Council may prescribe; one of such members shall be the Deputy Minister of Finance or the Comptroller, Government Guarantee Branch of the Department of Finance.

There is hereby constituted a body corporate, to be known as the Canadian Maritime Commission, for the purposes set out in this Act.

There is hereby established a body corporate for the purposes set forth in this Act to be called the Canadian Overseas Telecommunication Corporation.

There shall be a board to be known as The Canadian Wheat Board, which shall consist of not less than three nor more than five members appointed by the Governor in Council.

There is hereby established a Corporation called the "Central Mortgage and Housing Corporation" consisting of the Minister and those persons who from time to time comprise the Board of Directors.

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There is hereby constituted a body corporate, to be known as the Dominion Coal Board, for the purposes set out in this Act.

There shall be a corporation to be known as Export Credits Insurance Corporation, consisting of those persons as members who for the time being are the Deputy Minister of Trade and Commerce, the Deputy Minister of Finance and the Governor of the Bank of Canada.

There shall be a Commission to be called the Federal District Commission, consisting of twenty members.

There shall be, under the direction of the Minister, a Fisheries Prices Support Board consisting of those persons as members who for the time being comprise the Board of Directors and the Assistant Deputy Governor of the Bank of Canada, who shall constitute a corporation which shall be for all purposes of this Act the agent of Her Majesty in right of Canada.

There shall be, under the direction of the Minister, a Board to be known as the "National Harbours Board" consisting of three members, namely, a Chairman, a Vice-Chairman and a third member, who shall be appointed by the Governor in Council to hold office during good behaviour for ten years.

There is hereby established for the purposes set forth in this Act a corporation to be called the Northwest Territories Power Commission.

There shall be a Council to be called "The Honorary Advisory Council for Scientific and Industrial Research".

There is hereby established a corporation called "The St. Lawrence Seaway Authority", consisting of a President and two other members as provided in this Act.

There shall be a corporation to be known as the Crown Assets Disposal Corporation.

For the purposes set forth in this Act, there is hereby established a corporation, called the "Northern Ontario Pipe Line Crown Corporation", consisting of a President and four other directors.

There is hereby established a Commission called the "Unemployment Insurance Commission" consisting of three Commissioners, appointed by the Governor in Council, of whom one shall be Chief Commissioner.

There shall be established a bank to be called the Bank of Canada.

There shall be appointed by the Governor in Council a council to be called "The Vocational Training Advisory Council".

The Board of Trustees constituted by chapter 33 of the Statutes of 1913 as a body corporate under the name of the National Gallery of Canada is hereby continued as a body corporate under the name of the National Gallery of Canada.

3. Membership

Provisions respecting membership deal with appointment, re-appointment, tenure of office, eligibility for appointment, removal and a variety of other matters. In many provisions, two or more matters are included in a

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single sentence. The number of members and the method of appointment are usually dealt with in one sentence, and frequently there is also added a statement of the tenure of office. Sometimes provision for salary is also included. There is no reason why various matters should not be included in one section, but if any of the matters included are complicated it would be better to divide the section into two or more subsections.

(a) Number and appointment

The Board shall consist of not less than five and not more than nine members, appointed by the Governor in Council to hold office during pleasure.

The Commission shall consist of one member to be appointed by the Governor in Council to be chairman and not more than two additional members to be appointed by the Governor in Council.

The Governor in Council shall appoint the members of the Authority to hold office during good behaviour for a term not exceeding ten years, who shall be paid such salaries as may be fixed by the Governor in Council.

The Corporation shall consist of a board of not less than six directors appointed by the Minister with the approval of the Governor in Council.

The Board shall consist of fifteen members appointed by the Minister as follows: two from the Department, two representing the fishery industry on the Atlantic Coast, two representing the fishery industry on the Pacific Coast, and nine scientists selected from a list including nominations which may be made by any Canadian University whose staff embraces scientists engaged in research work in any way bearing upon fishery problems; for subsequent appointments of scientific members a list including nominations as aforesaid shall be supplied to the Minister by the Board.

When a member ceases to be a member before the end of the term for which he was appointed, the Governor in Council shall appoint a person to be a member for the remainder of that term.

The Commission shall consist of three members appointed by the Governor in Council to hold office during good behaviour for five years.

In addition to the director who shall be the President and General Manager, the Governor in Council shall appoint four other directors to hold office during the following terms:

- (a) one director to hold office for one year after the date of his appointment;
- (b) one director to hold office for two years after the date of his appointment;
- (c) two directors to hold office for three years after the date of their appointment;

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and the Governor in Council shall, on the expiration of the terms of office of the directors so appointed and at intervals of three years thereafter, appoint a corresponding number of directors to hold office for a term of three years.

Where the office of a director becomes vacant during the term of the director appointed thereto, the Governor in Council may appoint a director for the remainder of the said term.

(1) The Board of Directors shall consist of a President and Vice-President appointed in accordance with this Act, and eight other members, three of whom shall be selected from the public service of Canada and five of whom shall be selected from outside the public service of Canada.

(2) The three directors selected from the public service of Canada shall be appointed by the Governor in Council and hold office during pleasure, and the five directors selected from outside the public service of Canada shall be appointed and hold office as provided in section 8.

(3) Where a director is a member of the public service of Canada, the Governor in Council may authorize another member of the public service of Canada to act as director in his stead and the member while so acting shall be deemed to be a director.

The Governor in Council shall make the first appointments to the offices of President and Vice-President and in the first instance fix the salaries and thereafter the Board with the approval of the Governor in Council shall appoint and fix the salaries of the President and Vice-President.

The Minister, with the approval of the Governor in Council, shall appoint five directors to hold office during the following terms:

- (a) one director to hold office until the 1st day of April, 1949;
- (b) two directors to hold office until the 1st day of April, 1950;
- (c) two directors to hold office until the 1st day of April 1951;

and shall, with the approval of the Governor in Council, on the expiration of the terms of office of the directors so appointed, and at intervals of three years thereafter, appoint a corresponding number of directors to hold office for a term of three years.

The Board shall consist of not more than seven members appointed by the Governor in Council and who shall hold office during pleasure.

(b) *Tenure of Office*

By virtue of the *Interpretation Act*, an appointment is during pleasure unless it is otherwise provided. Provision that a person is to hold office during pleasure for a specified term does not confer a sinecure; it means that the appointee may be removed from office at any time, and that he will automatically cease to hold office at the end of the prescribed term. Provision for an appointment for a fixed term, without a statement that it is during pleasure, is also an appointment during pleasure. Security of tenure can be conferred only by prescribing some other tenure, e.g. during good behaviour, for life, or until a specified age, but in all such cases, removing authority should be provided; otherwise the appointee could be removed only by judicial proceedings.

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Many statutes provide that an appointee *shall hold office during pleasure (good behaviour)*. Strictly, this is not correct. In this form the phrase *during pleasure* is adverbial, modifying *hold*, and describes the manner in which the appointee is obliged to hold the office and he would literally be guilty of a breach of the statute if he refused or resigned. The phrase should qualify the verb *appoint* so as to describe the nature of the appointment, or the manner in which the appointing authority is to be exercised. It is, therefore, better to say that the person is to be appointed during pleasure (good behaviour) or that he is to be appointed *to hold office* during pleasure or good behaviour. It could also be stated that the appointee *holds office* (instead of *shall hold office*); in this form the words would be a description of his tenure rather than a command to hold office.

Sometimes special provisions are inserted for the first slate of officers so that they will not all cease to hold office at the same time; the device employed is to appoint one or more groups for a term shorter than the normal maximum term.

Each member holds office during good behaviour but may be removed for cause at any time by the Governor in Council, but no Commissioner shall hold office beyond the age of seventy years.

The President and Vice-President hold office during good behaviour for a term of seven years but are removable by the Governor in Council, on a resolution of the Board, for permanent incapacity or for other cause.

The members of the Commission hold office during pleasure.

The members of the Board shall be appointed for a term of four years, except that of the members first appointed one shall be appointed for a term of six years, two for a term of four years each and two for a term of six years each.

4. (1) The Chairman and Vice-Chairman of the Council shall be appointed for such terms, not exceeding five years each, as are fixed by the Governor in Council.

(2) Each of the other members of the Council shall be appointed for a term of three years, except that of those first appointed not more than six shall be appointed for a term of two years, not more than six shall be appointed for a term of three years and not more than seven shall be appointed for a term of four years.

Each member holds office during good behaviour for a period of ten years from the date of his appointment.

A member appointed by the Governor in Council holds office during pleasure for such period not exceeding five years as may be fixed by the Governor in Council.

Members shall be appointed for a term of five years, and a retiring member is eligible for re-appointment.

Every member holds office for a period to be fixed by the Governor in Council not exceeding ten years from the day of his appointment but may be

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removed for cause at any time by the Governor in Council upon address of the Senate and House of Commons.

The members of the Board shall be appointed by the Governor in Council to hold office during pleasure.

A member of the Board holds office during pleasure and shall be paid such salary as the Governor in Council may fix.

(1) Subject to subsection (3) each member of the Board, other than the Commissioner, holds office for three years, but may be removed for cause at any time by the Governor in Council.

(2) Of the members first appointed, three shall be appointed for a period of one year, three for a period of two years and two for a period of three years.

(3) Each member holds office during good behaviour for such term not exceeding ten years as may be fixed by the Governor in Council at the time of his appointment but may be removed for cause at any time by the Governor in Council.

(4) A member ceases to hold office upon reaching the age of seventy years.

The members of the Board appointed by the Governor in Council hold office during pleasure and shall be paid such, if any, salaries as may from time to time be fixed by the Governor in Council.

The Chairman holds office during good behaviour for a period of ten years from the time of his designation as Chairman and the other Governors hold office during good behaviour for a period of three years, but the Chairman and the other Governors may be removed for cause at any time by the Governor in Council.

The Commissioner shall be appointed for such a period of years as the Governor in Council may designate.

The President and General Manager and the Vice-President hold office during good behaviour for a term of seven years but are removable by the Governor in Council for permanent incapacity or for other cause.

(c) Re-Appointment

A member is, upon the expiration of his term of office, eligible for re-appointment.

A member on the expiration of his term of office is eligible for re-appointment.

A retiring member of the Board is eligible for re-appointment.

A member, on the expiration of his term of office, may be re-appointed for a further term not exceeding ten years.

A member on the expiration of his term of office is, if not disqualified by age, eligible for re-appointment.

(d) Removal

The President and General Manager and the Vice-President hold office during good behaviour for a term of seven years but are removable by the Governor in Council for permanent incapacity or for other cause.

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A director appointed under this section is removable from office by the Governor in Council for permanent incapacity or for other cause.

When in the opinion of the Board a director appointed under this section becomes permanently incapacitated he may be removed from office by resolution of the Board approved by the Governor in Council.

If any of the members, by reason of any temporary incapacity, is unable at any time to perform the duties of his office, the Governor in Council may appoint a temporary substitute member, upon such terms and conditions as the Governor in Council may prescribe.

(e) *Eligibility*

If provisions as to eligibility are included, two distinct concepts must be kept in mind — eligibility for the appointment and eligibility to continue in office. For example, if the statute provided that a person is not eligible to be appointed unless he is a resident of Canada, the question arises whether a properly appointed person ceases to be a member if he subsequently ceases to be a resident of Canada. In many statutes it is not clear what the intention is.

The use of the auxiliary *shall* can cause ambiguity here.³ For example, if the statute provided that a member *shall be a resident of Canada*, can a person be appointed if he is not a resident, or must he be a resident at the time of his appointment; and, if so, must he remain a resident? It is better to say that he *is not eligible* to be appointed or to hold the office unless he is a resident of Canada.

A person is not eligible to be appointed or to continue as a representative for a province unless he resides in that province.

No person is eligible for appointment to the Board who has any pecuniary interest, direct or indirect, individually or as a shareholder or partner or otherwise, in commercial film activity.

No person is eligible to be appointed or to continue as Governor or Deputy Governor who

- (a) is not a Canadian citizen;
- (b) is a member of the Senate or House of Commons of Canada or a member of a provincial legislature;
- (c) is employed in any capacity in the public service of Canada or of any province of Canada or holds any office or position for which any salary or other remuneration is payable out of public moneys;
- (d) except as authorized by or under any Act of Parliament, is a director, officer or employee of any other bank or financial institution or has an interest as a shareholder in any other bank or financial institution; or
- (e) has reached the age of seventy-five years.

³ See Book One, Ch. II.

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21. (1) A person is not eligible to be a director unless he holds stock of the bank as the absolute and sole owner thereof in his individual right and not as trustee or in the right of another, on which not less than

- (a) three thousand dollars, or such greater amount as the by-laws require, have been paid up, when the paid-up capital stock of the bank is one million dollars or less,
- (b) four thousand dollars, or such greater amount as the by-laws require, have been paid up, when the paid-up capital stock of the bank is over one million dollars and does not exceed three million dollars, or
- (c) five thousand dollars, or such greater amount as the by-laws require, have been paid up, when the paid-up capital stock of the bank exceeds three million dollars;

except that in the case of not more than one-quarter of the number of directors the minimum requirements of subscriptions to stock in paragraphs (a), (b) and (c) shall be reduced to fifteen hundred dollars, two thousand dollars, and twenty-five hundred dollars respectively.

(2) A majority of the directors shall be subjects of Her Majesty ordinarily resident in Canada.

(3) The election or appointment of any person as a director is void if the composition of the board of directors would as a result thereof fail to comply with subsection (2).

(4) A person is not eligible to be elected or appointed a director after the first day of July, 1959, if he has reached the age of seventy-five years.

(5) A director ceases to be a director if

- (a) he ceases to fulfil the requirements of subsection (1) with respect to holdings of stock, or
- (b) he ceases to be a subject of Her Majesty ordinarily resident in Canada and as a result thereof the composition of the board of directors ceases to comply with subsection (2).

(f) *Substitute and Temporary Members*

Provisions are sometimes included for the appointment of a temporary or substitute member who may act when a member is absent or unable to carry out his duties. Two problems arise:

- 1. Can the substitute act if the office is vacant?
- 2. Can the substitute be appointed before the absence or illness, etc., arises?

A provision often found is the following:

When a member of the Board is unable at any time to perform the duties of his office by reason of absence or temporary incapacity the Governor in Council may appoint a temporary substitute member upon such terms and conditions as the Governor in Council may prescribe.

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Under the foregoing provision the substitute member could not be appointed or act if there is a vacancy on the Board; and he could not be appointed before the absence or incapacity arose. Under the following provisions he could be so appointed.

The Governor in Council may, upon such terms and conditions as he may prescribe, appoint a temporary substitute member if a member of the Board is unable at any time to perform the duties of his office by reason of absence or incapacity or if the office is vacant.

The Board may authorize one of the members of the Board, or an officer of the Bank, to act as President for the time being in the event that the President is absent or unable to act or the office is vacant, but no such person has authority to act as President for a period exceeding sixty days without the approval of the Governor in Council.

If the Chairman of the Board of Directors is absent or unable to act or the office is vacant the remaining directors may elect one of their number to be the acting Chairman during such absence, inability or vacancy; the acting Chairman is also during the same period the acting Chairman of the Board of Directors of every other company comprised in Canadian National Railways, and he may be paid by the National Company such additional remuneration, if any, as the Governor in Council approves

(2) If the Governor is absent or unable to act or the office is vacant, the Deputy Governor has and may exercise all the powers and functions of the Governor.

(3) The Board may authorize one of the members of the Board or one of the persons appointed under section 7 to act as the Governor for the time being in the event that the Governor and Deputy Governor are absent or unable to act or the office is vacant, but no such person has authority to act as Governor for a period exceeding one month without the approval of the Governor in Council.

The Governor in Council may, on the recommendation of the Minister, appoint a person to be an alternate director for a member of the Corporation and the alternate director so appointed shall act as a director of the Corporation during any period in which such member is, by reason of illness, absence or other incapacity, unable to act as a director and shall, while so acting, be deemed to be a director.

If any member by reason of illness or other incapacity or absence from Canada, is unable at any time to perform the duties of his position, or if the position of a member is at any time vacant, the Governor in Council may make a temporary appointment of a qualified person to act in his place or in such position upon such terms and conditions and for such time as the Governor in Council may prescribe.

(3) The Governor in Council may from time to time appoint not more than three additional temporary members, and in addition, may appoint to be additional members of the Board, without remuneration as such, the Deputy Minister and, as his alternate, the Assistant Deputy Minister, and one other person who is not on the staff of the Department.

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(4) Every temporary member shall be appointed for a period not exceeding one year, but on the expiration of his term of office he is eligible for re-appointment.

Where a member of the Authority is absent or incapable for any reason of performing the duties of his office or the office thereof is vacant, the Governor in Council may appoint a temporary substitute member to hold the office upon such terms and conditions as the Governor in Council may prescribe.

Where the Chairman, Assistant Chairman or any other member is ill or otherwise unable to act, or where his office is vacant, the Governor in Council may appoint some person qualified to hold the office to act in his stead during his illness or incapacity or until the office is filled as the case may be.

(g) *Vacancies and Absences*

Provisions dealing with vacancies or absences are similar to those providing for the appointment of substitute or temporary members. In some cases the appointing authority is empowered to *authorize* or to *designate* an acting member, and sometimes the statute states who is to act.

The Governor in Council may authorize a Deputy Director to exercise and perform the duties of the Director whenever the Director is absent or unable to act or whenever there is a vacancy in the office of Director.

The Governor in Council may authorize any person to exercise the powers and perform the duties of the Director whenever the Director and the Deputy Directors are absent or unable to act or, if one or more of those offices are vacant, whenever the holders of the other of such offices are absent or unable to act.

In addition to the Chairman and members of the Board, the Governor in Council may appoint a person as vice-chairman to act in the place of the Chairman during his absence for any reason, and the vice-chairman shall be a member of the Board while so acting.

In the event of a casual vacancy occurring on the board, the Governor in Council shall appoint a person to fill such vacancy for the balance of the term of the Governor replaced.

A vacancy in the Commission does not impair the right of the remaining members to act.

The exercise of the powers of the Authority is not impaired by reason of a vacancy in its membership.

Where the office of a director becomes vacant during the term of the director appointed thereto, the Minister shall, with the approval of the Governor in Council, appoint a director for the remainder of the term.

During the incapacity or absence for any reason of the President, the Vice-President may exercise and perform all the powers and functions of the President.

In the absence of the President, the Vice-President shall act as chairman and, in the absence of the President and Vice-President, another director designated by those present shall act as chairman.

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In the event of a casual vacancy occurring on the Board, the Minister, with the approval of the Governor in Council, may appoint a person to fill such vacancy.

In the absence of the Commissioner or upon his resignation or inability to act, the senior Deputy Commissioner has full power and authority to act in his place and stead.

(h) *Remuneration*

It is usual to insert some provisions respecting remuneration. These may take various forms, depending upon what is intended. Thus, it may be provided that

1. there be no remuneration,
2. a fixed salary may be paid,
3. a salary to be fixed may be paid,
4. fees may be paid,
5. expenses may be paid.

Sometimes a statute says that a person *shall receive* a salary. This is not right; the member is not being commanded to take a salary. The correct form is that he *shall be paid* or *may be paid*. It matters little whether it is *shall* or *may*. If it is *shall*, the treasury officials are then commanded to pay; if it is *may*, they are authorized to pay; the practical result is the same. Sometimes it is stated that the member *is entitled* to be paid.

No member of the Council, with the exception of the President and the Vice-President, shall be paid any payment or emolument for his services, but each member shall be paid such travelling and other expenses in connection with the work of the Council as may be approved by the Governor in Council.

The Board, with the approval of the Minister, may fix the President's salary and the fees to be paid to directors for attending meetings.

Every director is entitled to be reimbursed in respect of his actual disbursements for expenses reasonably incurred in connection with the discharge of his duties under this Act.

The members of the Board shall serve without remuneration but may be paid reasonable travelling and other expenses when engaged on the business of the Board.

The salaries of the members of the Board shall be fixed by the Governor in Council.

The directors appointed under this section are entitled to receive for attendance at directors' meetings and Executive Committee meetings, such fee as may be fixed by the by-laws of the Corporation, but the aggregate amount of the fees paid to all directors, exclusive of expenses, shall not in any year exceed ten thousand dollars.

Each member, other than the Chairman, shall be paid such remuneration for his services as the Governor in Council may fix and is entitled to be paid his travelling and other expenses in connection with the work of the Board.

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Each member of the Commission shall be paid such sums for his service as the Governor in Council may determine.

Each member shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

Except as in this Act otherwise provided, no member of the Board shall receive payment or emolument for his services as such, but each member shall receive such payments for his travelling and other expenses in connection with the work of the Board as may be approved by the Governor in Council.

The members shall be paid such remuneration as may be fixed by the Governor in Council, and such actual and reasonable expenses as may be incurred by them in the discharge of their duties.

A member of the Board, other than the Commissioner or a member of the public service or Canadian Forces, may be paid such fee for each meeting of the Board he attends as may be fixed by by-law of the Board, and the members of the Board are entitled to be paid actual travelling and living expenses necessarily incurred in connection with the business of the Board.

The remuneration of the members of the Board shall be fixed by the Governor in Council.

The Chairman shall be paid a salary of ten thousand dollars per annum and each of the other members, including temporary members, shall be paid at the rate of eight thousand five hundred dollars per annum.

Each member of the Board shall be paid such sum for his services as the Governor in Council may from time to time determine.

All Governors are entitled to receive and be paid their actual disbursements for expenses necessarily incurred by them in connection with the discharge of their duties under this Act.

The Commissioner shall be paid such salary and the other members such fees as the Governor in Council may prescribe, such salary and fees to be a charge against the revenues of the Board.

The directors appointed under this section are entitled to receive for attendance at directors' meetings and executive committee meetings such fees as may be fixed by the by-laws of the Corporation.

4. Chief Executive Officers

It is usual to appoint some person to be president, chairman or other chief executive officer. Sometimes the person is *appointed* to the *office* of chairman, etc.; sometimes he is appointed to the office of *member* and then designated to be chairman. There may or may not be a statement of his duties as presiding officer.

One of the members shall be appointed by the Governor in Council to be Chairman of the Commission; the Chairman is the chief executive officer of the Commission and has supervision over and direction of the work of the Commission.

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The Governor in Council shall designate one of the members of the Board to be the Chairman thereof.

The Governor in Council shall designate one of the members appointed from the Department to be the Executive Director of the Board.

The Executive Director shall be the chief administrative officer of the Board and shall perform such duties as the Board with the approval of the Minister prescribes and shall also be the secretary of the Board.

The Governor in Council shall designate one of the members of the Board to be chairman and one to be vice-chairman.

One of the members shall be appointed Chairman and another Vice-Chairman; the Chairman, who shall be an officer of the Department of Fisheries, shall preside at meetings of the Board and, in his absence, the Vice-Chairman; the other two members shall be appointed as representatives of the fishermen-producers, whether co-operative or otherwise.

One of the members shall be appointed chairman and another vice-chairman by the Governor in Council, and at sessions of the Board the chairman shall preside, and in his absence the vice-chairman.

The Chairman of the Board has control and direction over the duties to be performed by the other members of the Board and the duties to be performed by such members of the staff of the Department as may be assigned to the Board by the Minister.

(1) One of the members shall be appointed by the Governor in Council to be the President of the Board.

(2) The President is the chief executive officer of the Board and has supervision over direction of the work of the Board and of the officers, technical and otherwise, employed for the purpose of carrying on the work of the Board.

The Governor in Council shall designate one of the Governors to be the Chairman and one to be the Vice-Chairman of the Corporation.

There shall be a general manager who shall be chief executive of the Corporation and shall be appointed by the Governor in Council on the recommendation of the Corporation.

One of the members shall be appointed by the Governor in Council to be the Chairman of the Commission; the Chairman is the Chief executive officer of the Commission, and has supervision over and direction of the work of the Commission and of the officers, clerks and employees appointed to carry on the business of the Commission.

The Governor in Council shall appoint the President and General Manager and a Vice-President and shall fix their salaries.

One of the members shall be appointed Chief Commissioner and another Assistant Chief Commissioner and at sessions of the Board the Chief Commissioner shall preside and in his absence the Assistant Chief Commissioner.

The President is the chairman of the Board of Directors and the Chief Executive Officer of the Corporation and has on behalf of the Board the

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direction and control of the business of the Corporation with authority to act in the conduct of the business of the Corporation in all matters that are not by this Act or by the by-laws, specifically reserved to be done by the Board or by the Executive Committee.

The Chairman shall be the chief executive officer of the Board, shall have supervision over and direction of the work of the Board and of the officers, clerks and employees appointed to carry on the business of the Board.

5. Quorum

The normal rule is that a majority constitutes a quorum. Section 21 of the *Interpretation Act* provides as follows:

21. (1) Where an act or thing is required or authorized to be done by more than two persons, a majority of them may do it.

(2) Where an enactment establishes a board, court, commission or other body consisting of three or more members (in this section called an "association"),

(a) at a meeting of the association, a number of members of the association equal to

(i) at least one-half of the number of members provided for by the enactment, if that number is a fixed number, and

(ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range,

constitutes a quorum;

(b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, shall be deemed to have been done by the association; and

(c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

Occasionally a quorum provision is inserted, but it is not strictly necessary unless the normal rule is to be changed.

Where there is no vacancy in the Commission, or only one vacancy, two members constitute a quorum, and where there are two vacancies, the member holding office may exercise and perform all the powers, duties and functions of the Commission under this Act.

Two members of the Board constitute a quorum.

In all meetings of the Board, the votes of the majority of the members shall govern.

A majority of the members appointed constitutes a quorum.

Where the membership consists of two or three members, two members constitute a quorum.

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6. Duties

Sometimes a member is expressly prohibited from engaging in other activities.

Each member shall devote the whole of his time to the performance of his duties under this Act and shall not accept or hold any office or employment that the Governor in Council may declare to be inconsistent with the performance of his duties under this Act.

Each member shall devote his whole time to the business of the Board.

7. Oath of Office

An oath of office is not necessary unless the statute requires it.

Before any member enters upon the execution of his duties he shall take and subscribe before the Clerk of the Privy Council, an oath of office, which shall be filed in the office of the said Clerk.

Each Governor shall, before acting as such, take and subscribe before the Clerk of the Privy Council and shall file in the office of the said Clerk, an oath of office in the following form:

I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of Governor of the Canadian Broadcasting Corporation, and that, while I continue to hold such office, I will not accept or hold any other office or employment, or have any pecuniary interest, direct or indirect, individually or as a shareholder or partner, or otherwise, in broadcasting or in the manufacture or distribution of radio apparatus. So help me God.

Before any member enters upon the execution of his duties, he shall take and subscribe, before the Clerk of the Privy Council, an oath, which shall be filed in the office of the said Clerk, in the following form:

"I,....., solemnly and sincerely swear that I will faithfully and honestly fulfil the duties which devolve upon me as a member of the Canadian Maritime Commission. So help me God".

Every director shall, before acting as such, take before a justice of the peace or commissioner for taking affidavits, and file with the secretary of the Corporation, an oath of fidelity and secrecy in the form set out in the Schedule.

APPENDIX I

COODE

ON

LEGISLATIVE EXPRESSION;

OR,

THE LANGUAGE

OF

THE WRITTEN LAW

"To say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays, (which have sometimes disgraced the English as well as other courts of justice,) owe their origin, not to the common law itself, but to innovations that have been made in it by Acts of Parliament, 'overladen,' as Sir Edward Coke expresses it, 'with provisoes and additions, and many times on a sudden penned or corrected by men of none or very little judgment in law.'"—BLACKSTONE, *Commentaries*, Introd. Sect. 1.

"What I shall propound is not to the matter of the laws, but to the manner of their registry, expression, and tradition; so that it giveth them rather new light than any new nature."—LORD BACON, *Proposal of a Digest*.

BY GEORGE COODE

OF THE INNER TEMPLE, BARRISTER-AT-LAW

SECOND EDITION

ADVERTISEMENT TO THE SECOND EDITION.

THE writer of this Tract was compelled, by the absolute want of any examples of a strict adherence to a better method of legislative composition, to illustrate the method he recommended by examples exclusively of his own compilation. In the nine years which have followed its first publication, abundant instances are to be found, especially in some of the Bills prepared under the direction of the Government, and in the drafts of some distinguished conveyancers of very skilful and happy adoption of simple, orderly and logical English in the manner proposed in this Tract, to legislative and jurisprudential composition. A hope may now be fairly entertained, that a good method once successfully adopted will be henceforth extended by the best practical means — by the example, imitation, and tradition of professional draftsmen; and although this may render unnecessary the further appearance of this Tract, its author will be very well satisfied that his project shall be forgotten in its own realisation.

G.C.

March 1, 1852.

ADVERTISEMENT TO THE FIRST EDITION.

THE following remarks were first printed as an introduction to the Appendix annexed to the Report of the Poor Law Commissioners on Local Taxation, presented to Parliament in 1843. That Appendix, consisting of a digest of the whole of the Statute-law relating to the subject, was drawn up on the plan explained by the remarks.

It would not, on that occasion, have been desirable to draw illustrations or examples from any part of the law, the matter of which was not immediately under consideration. Much more striking illustrations could easily have been found amongst the statutes on more popular subjects, which, on this account, are left to be framed by persons less conversant with practical details and legal language, than those who for the most part are concerned in preparing laws directing the imposition and levy of taxes. But for this very reason, that the laws on the subject of taxation are generally better considered and better framed than most others, it has appeared to the writer still to be desirable in this reprint to limit his illustrations of imperfect expression to examples taken from these laws; and, accordingly, he has simply reprinted his remarks as they appeared in the Parliamentary paper, without addition or alteration.

February 15, 1845.

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ON LEGISLATIVE EXPRESSION

THERE is an acknowledged, indeed an obvious, distinction between the three operations of determining the final objects or policy of a law, of choosing the means for the attainment of those objects, and of enunciating that choice by means of language. Though the last process is subordinate, and is only executory of the two former, it does, like all executory functions, according as they are well or ill performed, fix the limits within which the superior function shall operate. The most determined will in the lawgiver, the most benevolent and sagacious policy, and the most happy choice and adaptation of means, may all, in the process of drawing up the law, be easily sacrificed to the incompetency of a draftsman.

The present paper is confined to the examination of what are the essential parts of the third process of enunciating in language the will of the legislature, and to the statement of the very simple rules which are derivable from that analysis.

It is beyond a doubt that many of the more positive errors and gross defects of legislation are to be prevented by observing a very few intelligible and simple rules, which any person capable of dividing grammatically a sentence of his native language would be competent to apply. Through neglect of such rules a law, good in its substance, is rendered confused in its form, proportionally difficult to be understood and applied, and sometimes is even made inoperative, or, what is worse, a delusion and a snare.

APPENDIX I

Arbitrary or artificial rules of composition cannot be insisted on. Even where they can be made generally intelligible they will not be sufficiently comprehensive for all cases. Legitimate occasions for disregarding them will occur, and the fair cases for exception being once admitted, the application of the rules could scarcely be maintained in any case. None but natural rules, that is to say, such rules as are strictly derived from the nature of the subject matter, and therefore of universal application to it, can ever be maintained. Such natural rules, from their admitting no exceptions, and from their being extremely simple, intelligible, and efficacious, can be easily applied by the draftsman, and any infraction of them readily detected and displayed. To ascertain these natural rules, it is necessary first to determine what are essentially the elements of a legislative expression.

The Elements of every Legislative Expression.

Essential
elements.

THE EXPRESSION of every law essentially consists of,

1. *the legal
subject;*

— 1st, the description of *the legal Subject;*

2. *the legal action.*

— 2dly, the enunciation of *the legal Action.*

Occasional
elements

To these, when the law is not of universal application, are to be added,

3. *the Case;*

— 3dly, the description of *the Case* to which the legal action is confined; and,

4. *the Conditions.*

— 4thly, *the Conditions* on performance of which the legal action operates.

Some general explanations will perhaps be here allowed. If the statements appear too elementary, it will be borne in mind that these elementary matters are as much disregarded in practice as if they were unknown, and that it is therefore allowable to recur to them as things not altogether obvious nor universally admitted; and this more especially in a matter in which a distinct recognition of first elements conduces so much, as it will here be seen to do, to clearness and certainty in the most remote and complicate practical combinations.

The purpose of the law in all cases is to secure some benefit to some person or persons. When this benefit is secured to the public generally, or when it may be acquired by any person independently of the will of any other, the benefit secured is a Right; where it is confined to a class of persons into which any

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other person cannot enter, or into which he can only be admitted by the permission of some person or persons, the benefit secured is a Privilege. Privileges conferred for the purpose of being used, not for the benefit of the privileged person, but for the benefit and on behalf of some other person or persons, are Powers.

It is only possible to confer a Right, or Privilege, or Power, on one set of persons, by imposing corresponding Liabilities or Obligations on other persons, compelling these to afford the benefit conferred, or to abstain from invading it. Though the imposition of an Obligation is never the ultimate purpose of a law, it is very often (especially whenever the corresponding Right, Privilege, or Power is already recognised) the only thing which a given law does, in fact, express.

A law, then, can operate in two ways: it can confer the Right, Privilege, or Power directly, and it can impose the corresponding Obligation directly*. It is rarely, however, that both are done in the same law. Either the Right, or Privilege, or Power, is created, as that A may enjoy the Rights of a natural born subject, or may marry again; that B shall have the Privilege of trading exclusively to the East Indies, or of measuring all the cloth brought to a certain market, taking a fee for it; or that C shall have the Power, in a certain case, to imprison another; and the corresponding Obligations are implied, that is, they are left to result from the declaration of the Right, Privilege, or Power: or more ordinarily the Obligation is alone expressed, and the resulting Right, Privilege, or Power is left to be enjoyed through the practical operation of the Obligation.

But the law can only perform the one or the other of these processes, or both. No single sentence in a law can do anything else than one or both of these.†

*When a right has existed before, and the immediate object of the law is to restrict that right, the effect is still to create a new right; but the right here created consists in the new liberty communicated to those who were before under an obligation to respect the former unrestricted right.

†Preambles and Recitals to Statutes often contain merely statements of fact or opinion, but these are no exceptions, for they are not laws, though they are intended to indicate the intention of the law. Declaratory enactments, interpretation clauses, and adaptations or extensions of former laws to new purposes, do not always display immediately the purpose of creating or of extending rights, privileges, or powers of persons, or of imposing obligations and liabilities on persons, but they always are in fact, only very comprehensive extensions or restrictions of the rights and obligations created by other provisions.

If expressions like the following do not confer a right or power, or impose an obligation, they are mere impertinences: 'unless application shall have been first made by the person so complaining to the guardian, and, if he refuses redress to the visitor, (*it being part of his duty to redress matters of that sort,*) who shall order relief, if he thinks it necessary,' &c. 22 Geo. III. c. 83, s. 36.

APPENDIX I

It would follow, therefore, that if the modes of expression appropriate to these processes could be clearly defined, and simple and natural rules be given for their use, those rules would comprise all that is essential to the matter of this paper, — the expression of the will of the lawgiver.

The Legal Subject.

1. *the legal subject;*

NOW NO RIGHT, Privilege, or Power can be conferred, and no Obligation or Liability imposed, otherwise than on some person.

THE PERSON who may or may not, or shall or shall not do something or submit to something, is *the legal subject* of the legal action.

— the *extent* of the enactment determined by it.

The importance of a just discrimination and correct expression of the legal subject cannot easily be exaggerated. The description of the *legal subject* determines the *extent* of the law. On this portion of every legal sentence it depends whether a right or privilege shall be limited to too few persons or extended to too many; whether an obligation is imposed on more persons than is necessary or is not extended to sufficient persons in order to secure the correlative right; whether powers are reposed in right or wrong persons; whether sanctions are or are not made to fall on the proper subjects. Generally, be the law in itself good or bad, it is on this portion, the description of the legal subject, that its equal or unequal incidence upon persons depends. It is here that exemptions are filched by undetected omissions of persons, and encroachments effected by incautious insertions.

Hence the importance of the rules for securing the highest possible degree of clearness in the description and enumeration of *the legal subjects*.

The Legal Action.

2. *the legal Action;*

The *legal action* is that part of every legislative sentence in which the Right, Privilege, or Power, or the Obligation or Liability, is defined, wherein it is said that a person *may* or *may not*, or *shall* or *shall not* do any act, or *shall* submit to some act.

— the *nature* of the enactment determined by it.

As the *legal subject* defines the *extent* of the law, so the description of the *legal action* expresses the *nature* of the law. It expresses all that the law effects, as law. The selection of the legal subject is important; but it is on the description of the *legal action* that the whole function of legislation exercises and exhausts itself. No special rules of composition apply to it; but it peculiarly exercises the capacity for practical legislation. It is

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in the terms in which this *legal action* is expressed that every right, privilege, power, obligation, and sanction, is contained. It is in these terms that are to be detected the narrow definitions of rights, the authorization of licentious freedom, excessive privileges, inadequate or superfluous powers, insufficient or arbitrary obligations, inefficient, or misapplied, or cruel sanctions. It is on these terms, usually but few in number, that the vigilance of the legislator is chiefly to be exercised. It is in these few words that the efficacy or inefficacy, the cause of failure or success, the safety and the danger, the sweet and the sting of the law are to be found.

To this part of every legal sentence it is therefore all important that the attention of the public and of the legislators should be certainly and easily directed. The *legal action* should immediately appear on inspection of the sentence. No good enactment requires to be covered up in deceptive language, or involved in a preamble, or got by implication from terms used in the description of the legal subject, or of the case or conditions; — no bad legislation should be allowed the chance of passing muster in such ways.

Such are the essential elements of every legal sentence. Without both the *legal subject* and the *legal action* no law can be written; and all enactments of universal and constant operation consist of these alone. The practical importance of keeping them distinct has been adverted to. There is no conceivable case requiring any confusion of them.

Although the *legal subject* of a legislative command, permission, or prohibition, is always some *person* or more, the words of the law are often such as not to make this *person* apparent; but they seem to apply the command, or permission, or prohibition, to some *thing*. This is always only apparent. None but persons are the legal subjects of a law, however they may be verbally disguised or kept out of view. It is obviously impossible to confer in effect a right, privilege, or power, on a thing, or to impose obligations on a thing, or in other words, to affect a thing with a command, or prohibition or permission. All that can be done by the law in regard of things is to confer rights, privileges, and powers on persons in respect of them — to command, prohibit, or permit certain actions of persons in respect of certain things.

Enunciation of
the *legal subject*;
— persons;
— things;

The instances in the law of imperative and permissive language applied to things are innumerable. The obscurity produced by the form may be seen in such instances as the following. —

APPENDIX I

Legal Subject ALL RATES founded on such valuation *shall* be made, allowed, published, and recovered, in the same manner as rates for the relief of the poor.

4 & 5 Wm. 4, c. 35.

— meaning, apparently, no less than that the same PERSONS *shall* be liable as ratepayers; that the same PERSONS (overseers, *qu.* guardians?) *shall* make the rate; that the same PERSONS (overseers, *qu.* guardians?) *shall* publish the rate; that the same PERSONS *shall* pay or be liable to be levied on; and that the same PERSONS (overseers, *qu.* guardians? justices, constables) *shall* enforce the payment, as are respectively liable to the like obligations in the case of poor's rate.

Again —

Legal Subject THAT TRUE AND JUST COPIES of all rates hereafter to be made, [*shall*] be fairly wrote and entered in a book or books, to be provided for that purpose.

17 Geo. 2, c. 38, s. 13.

— meaning that THE 'OVERSEERS' *shall* provide books for the entry of rates, and that THE 'OVERSEERS' *shall* cause true and just copies of all rates to be fairly wrote and entered in such books.

Again —

Legal Subject That, in addition to the salary to be paid to the chief constable of the county,

REASONABLE ALLOWANCES

shall be made to him for extraordinary expenses necessarily incurred by him and by the constables under his orders in the apprehension of offenders and in the execution of his duties, &c.

WHICH ALLOWANCES

shall be examined and audited by the justices of the county in quarter sessions assembled.

2 & 3 Vic., c. 93, s. 18.

— meaning, to judge by other parts of the Act, that 'the TREASURER *shall* pay such allowances out of the County Rate;' but leaving it wholly impossible to tell who is bound to make the account. It would seem to be the treasurer's proper duty to do so when once the allowance has been made; and yet it would seem to be hard that he should be subject to loss, if the allowance should not be approved. Perhaps the meaning was, that

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the chief constable's account of 'extraordinary expenses' was to be 'examined and allowed,' not that the allowances should be examined and audited; but this reasonable meaning is wholly conjectural, while no reasonable meaning is apparent.

In the first of these examples, the whole of a most important set of provisions are rendered doubtful, perhaps inoperative, by the neglect to determine whether it is THE OVERSEERS of the individual parish, or THE GUARDIANS of the whole Union, who are to make, publish, and levy the rate. The example is a fair one of the frequent mischief produced by the practice of naming things instead of naming the persons who really are intended to be the legal subjects of the enactment.

The avoiding the definition of the person is often a mask of ignorance, or the resource of indolence; often it is the result merely of carelessness. As it is a disguise, it should never be adopted without a special reason.

The only legitimate occasion for naming a thing as the legal subject, is when the persons to be affected have been already ascertained, and the relations of those persons to the thing named have been already clearly determined. In such cases, if the persons to be affected in relation to that thing are very numerous, it will sometimes save a troublesome enumeration of persons to name the thing as the legal subject; thus to say the 'THE RATE *shall* be made and levied in the right manner as the poor's rate,' may save the enumeration of three sets of persons, the true legal subjects of the enactment, for it is equivalent to saying that THE PERSON liable to be rated to the relief of the poor *shall* be rated to this rate in like manner as to the poor's rate; that THE PERSONS (overseers and justices) authorized to make the poor's rate, *shall* make this rate in like manner as the poor's rate; and that THE PERSONS (justices, constables, overseers, &c.) empowered to levy poor's rates, *may* levy this rate in like manner as a poor's rate. Again, where a certain *term* has been used in relation to certain persons, these persons can often be extensively affected, or others included very conveniently, by using such term as the legal subject; thus THE WORD 'overseers' *shall* be construed 'to include overseers, churchwardens, assistant-overseers, and all other subordinate officers.'* &c.

*Nevertheless, in these provisions for arbitrary constructions the true legal subject is most usually disguised without necessity. Even in the instance given, the more proper expression is thus:—

The case Whenever the word 'overseer' is used in this Act,

Legal subject.... OVERSEERS, churchwardens, assistant-overseers, and other subordinate officers, &c.

Legal action....shall be held to be included.

APPENDIX I

—impersonal
expressions.

It may sometimes be convenient, instead of naming the legal subjects, to use an impersonal form, as, 'IT shall be lawful' where it is intended to confer a right, privilege, or power, on many undefined persons, but not universally on all persons. The form, however, has no advantage, but is needlessly indefinite, where the persons on whom the right, power, or privilege is to be conferred are easily denoted; thus, 'it shall be lawful for any two justices' may be better expressed by 'ANY TWO JUSTICES *may*', 'IT *shall* be lawful for any person to', or 'IT *shall not* be lawful for any person to,' are more clearly expressed by 'EVERY PERSON *may*', 'NO PERSON *shall*'.

—rules for
expression of the
legal subject.

The rules of most effect as to the expression of the legal subject, are,

First, to keep the *legal subject* distinct in form and in place from other parts of the legal sentence.

Secondly, not to permit it to be withdrawn from view or disguised by the non-description of *persons* or by the substitution of *things* instead of persons, or by the use of impersonal forms of expression.

Enunciation of
the legal action;

The legal subject of an enactment is always conceived as existing before *the legal action* can operate.* It is, in fact, merely the name or description of some existing object on which the law is about to act, and the use of the words to describe such an object is to be governed by the ordinary rules of composition. Therefore, in describing the legal subject,—and the same thing applies whenever any existing object is to be named or described in other parts of a legal sentence,—the business of a draftsman of a statute has nothing distinguishing it from the work of other writers in naming or in accurately describing the same objects.

The legal subjects having been determined by the ordinary process of naming or of definition, the intended *action of the law, upon those subjects*, comes to be described. In this some special rules of composition, modified by the peculiar attributes of the law, do apply.

If the law confers a right, privilege, or power on the legal subject, its language is properly facultative; if it imposes an

*It is most commonly some natural person. But sometimes the legal subjects of one enactment may have been created by some other legal action preceding the present enactment. Thus an enactment may take a man of a given description, and declare that he shall be a magistrate; in this enactment the man described is the legal subject, and the investiture with magisterial powers the legal action. Having thus by one legal action created the magistrate, he may now become the legal subject of some new legal action, as, where it is said, that ANY JUSTICE OF THE PEACE *may* commit an offender, &c.

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obligation to do or to abstain, its language is properly imperative or prohibitory. In this the language of the law is, or rather ought to be, confined to modes of speech peculiarly expressive of its facultative or compulsive functions. Language taking indicative or descriptive, or narrative or passive forms, or any other than authoritative forms, is totally out of place and character. In English the words *may* and *shall*, with their negatives, are exclusively the proper auxiliaries of the enacting verb. These auxiliaries with their negations, serving as they do peculiarly to join *the legal subject to the legal action*, and denoting peculiarly the facultative or compulsive character of the legal action, may be called *modal copulae*, or simply the *copulae of a legal sentence*.

— Copula;
enacting verb;

If a right, privilege, or power is conferred, the appropriate *copula* is *may* or *may not*; if a right, power, or privilege is to be abridged, the appropriate *copula* is *may not*; if an obligation is imposed to render any duty, the appropriate *copula* is *shall*; if the obligation is to abstain, the appropriate *copula* is *shall not*; again, if the purpose is to affect the legal subject with a liability or sanction, the appropriate *copula* is still '*shall*;' only when the subject is to be active, the whole enacting verb will be active, '*shall* forfeit,' &c. , and where the subject is to submit, or be passive, the whole enacting verb will be passive, as '*shall* be imprisoned,' &c.

All such descriptive and narrative expressions as 'it is hereby allowed, authorized, and permitted,' instead of *may*; 'is hereby commanded and required to,' or, '*shall*, and is hereby required to,' instead of simply '*shall*;' and all such passive expressions where the legal subject is intended to be active, as 'notice *shall be* given,' leaving the person to give it unascertained, instead of 'THE SURVEYOR (?) *shall* give notice;' 'THE RATES *shall* be made, allowed,' &c. , leaving it impossible to ascertain by whom, as in the 4 & 5 Wm. IV., c. 76, s. 35; instead of 'THE GUARDIANS (?) or THE OVERSEERS (?) *shall* make the rates;' 'THE ALLOWANCES *shall be* examined and audited' instead of 'THE CHIEF CONSTABLE (*qu.* THE TREASURER?) *shall* account for the allowances, and THE JUSTICES *shall* examine and audit such account,' &c. , are at the best weak and inexpressive, and are very frequently, as in some of the above instances, wholly unintelligible.

Not one case can be imagined, in which it is necessary or convenient to use any other than permissive or imperative language in the enacting verb; and these two rules, therefore, ought never to be allowed to be infringed;

APPENDIX I

- 1st. That the copula, which joins the *legal subject* and the *legal action* is to be *may*, or *may not*, or *shall*, or *shall not*, as 'ANY PERSON *may*,' 'NO PERSON *may*,' 'EVERY PERSON *shall*,' or 'NO PERSON *shall*,'
- 2nd. That the whole of the enacting verb is always to be an active verb, except only where the legal subject is to submit or suffer, as where executory force, or punishment, (sanctions) are directed to be submitted to by the person described in the legal subject.

It would almost seem unnecessary to add that the cases for facultative and for imperative language ought not to be confounded. Yet it is so often said in statutes that 'it shall be lawful' to do something, where it is in fact meant that certain parties 'shall' do the act, that the greatest misapprehensions are constantly caused, people believing that they have an option to do the act or not as they may think proper; and the courts of law have been obliged to frame a special rule of construction, an exceedingly indefinite one, however, and quite incapable of application in a multitude of instances, that wherever an act is authorized for the sake of justice, or wherever an act is authorized, which is for the public benefit, 'may,' or 'it shall be lawful,' must be construed to mean, 'shall,' or 'it is hereby required.' To avoid this difficulty apparently, the absurd formulae 'shall and may'; 'may and is hereby required'; 'it shall be lawful, and it is hereby required'; and a variety of others have been adopted, all equally amounting, however, to a simple command, and properly expressed by the single word *shall*. There could arise no difficulty if these rules were observed—

—whenever an act is allowed *as a right* or *as a privilege*, that is to all the members of the community, or to certain persons for their own benefit, the proper *copula* is '*may*,'

—whenever the act is authorized *as a power*, that is to certain persons to perform, not for their own benefit, but for the benefit of others on whose behalf the power is given, the proper *copula* is *shall*.

*Combinations of
several legal
subjects, copulae,
and legal actions.*

The combination of these elements are necessarily simple, and may be multiplied to any extent without rendering the expression of the law intricate or confused.

There may be a single *legal subject* and a single *legal action*; in which case there can be properly but one *copula*, inasmuch as the enunciation of one single action must either be

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facultative, or obligatory, or afflictive, cannot be more than one of these; as,

THE PARISHIONERS

may

as they think fit, order an abstract of the accounts to be printed and published.

THE OVERSEERS or the greater part of them

shall

take orders from time to time, with the consent of two justices, to raise the rate —

or there may be many *legal subjects*, to be operated upon by one *legal action*; in this case also there can be properly but one *copula*; as,

EVERY CLERK, COLLECTOR, RECEIVER, and OTHER OFFICER appointed by any Court of Sewers

shall

as often as is required by such Court, render a true, exact, and perfect account in writing under his hand—

or there may be one *legal subject*, to be operated upon by many *legal actions*, in which case there may be several *copulae*, inasmuch as some of the legal actions may be facultative, some obligatory, and some afflictive; as,

THE OVERSEERS of every parish

shall provide a book or books

and *shall* take care that true and just copies of all rates for the relief of the poor be fairly written and entered therein.

THE TENANT

may deduct the money so paid out of his rent

and *shall* be acquitted and discharged for so much money as he has so paid.

or there may be many *legal subjects*, and many *legal actions*, applied to all the same subjects: in this case also there may be several *copulae*; as

EVERY SURVEYOR, DISTRICT SURVEYOR, and ASSISTANT SURVEYOR

shall

within 14 days after the appointment of the new surveyor, make up his accounts for the year preceding, in writing, and *shall* sign and balance them,

and *shall* within one calendar month sign and lay them before the justices at a special session,

and *shall*, within 14 days after leaving his office, deliver his accounts, verified before justices at special sessions;

APPENDIX I

but if the *legal subjects* are all expressed and kept together, the extent of the law can never be difficult to express, and if right words be used, can never be mistaken. If the *copulae* of each enacting verb are joined immediately to their enacting verbs, and not thrown in a heap together to be afterwards discriminated and distributed to their proper subjects and actions, *ref-erendo singula singulis*, each legal action will, as a consequence, stand out singly and simply, and the whole law will be as easy to compose as it will be, when composed, easy of comprehension and terse in style.

Distinctive
printing for the
legal subject and
legal action;

The paramount legislative importance of these two members of legal sentence, the *subject* and the *action*, renders it desirable that they should not only be distinguished by the construction of the sentence, but that they should be instantly discovered by the eye, and each at once distinguished from the other. In the following Appendices* this is attempted; the beginning of the *legal subject* is distinguished by printing the first words in Roman capitals, and the commencement of each several *legal action* is distinguished by printing its copula in Italics.

The Case.

3. the Case.

IF ALL LEGISLATION were as simple as that instanced above, there would be but little use in making the foregoing distinctions. But it is now comparatively rare that rules of universal and constant operation are laid down by statutes. If such rules constituted a considerable part of the modern law, no great, or at least no very frequent, complication of expression would occur. The simplicity of the matter would secure a general simplicity of expression.

Importance of
legislating for
cases.

It is no demerit of modern legislation that it applies itself minutely to special cases. It would, in fact, be the greatest merit of any system of laws that they varied exactly as every case varied in its elements. It is the indiscriminating and general rules of law that make the harshness of a system of law—that make special classes of persons obnoxious to unintended and unforeseen oppression—that require for their mitigation the arbitrary modifications of judicial construction and of courts of equity. The more a legislature is civilized the more it measures and considers the differences in each class of cases, and adjusts the law to their varieties. With every fair enactment for the peculiarities of a special case, the law loses a portion of its

*That is to say in the Appendices to the Poor Law Commissioners' Report on Local Taxation. The same distinctive printing is adopted in the examples contained in this reprint.

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rudeness and unbending character. The proper object of legislation is to make certain rules of the utmost possible convenience—not to propound rules of the utmost possible generality. Legislation is not a science, but a practical art. The perfection of a science is reached when every particular proposition is resolved into or deducible from one general proposition; but the perfection of legislation is attained in proportion as every variety of right, and every corresponding obligation and liability are most specifically determined, and when the least is left to inference from extensive and remote generalities. It is most true that in adjusting its provisions to special differences, the general principles of the pre-existent law should be as far as possible adhered to; mutual consistency having a great value as well as particular aptness; and it is also true in regard to law as in regard to all other things, that a simple general rule is most easily comprehended by those who have no practical acquaintance with the particulars included by it, and this fact is also of practical importance in legislation: but to those who do know the particulars experimentally, as each man knows his own case, the more general the terms of a rule the less certain and close does its application appear—the more specific the terms of a rule, the more easily and precisely is its application seen and understood. Generalizing the expression of the law is more the work of the scholastic professor; specializing the law the proper task of the practical legislator. In this process of modifying and adjusting the law to special cases, the constant action of the legislature and of the judiciary of England has undeniably made a greater and better progress than the institutions of any other country; and to desire a codification or simplification which would destroy these nice adjustments, or diminish in any way the specialty of the law, or to propose arrangements to cramp or obstruct in future the further extension of specific legislation, would be to sacrifice aptness and certainty in the law to verbal generality; and to supplant the beneficent officiousness of the legislator by the despotic formalities of the methodizer.

Nevertheless, this beneficent process of adjusting our law to the partial and various interests of the community, has unquestionably, so far as our statute law is concerned, introduced a cumbrousness, intricacy, and confusion, quite without any parallel in the legislation of any other country.

Without some rule for expressing the limitation of the law to its specific occasions, the draftsman first draws an enactment in terms too general for his purpose; he then attempts to

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detract from its generality by interpolated limitations, qualifications, exceptions, and by that bane of all correct composition, the Proviso. It would indeed be lamentable if the aptness and flexibility of legislation could only be attained by such intricacy and confusion in the expression of the law, as we see resulting from this clumsy process. But there is no necessary connexion in these effects. The law can universally be made, like every other matter, clearer in all its details, and more compact in all its parts, by the orderly specification of those details.

Enunciation of
the case;

As on the due expression of the *legal subject* the *extent* of the law depends, and as on that of the *legal action* the *nature* of the law depends; so on the expression of *the case*, and of *the conditions*, do the clearness, precision, and form of our statute law mainly depend.

—rule for the
expression of the
case.

The rule to be observed is of such simplicity as to make its utterance appear almost an absurdity; but simple as it is, it is the most frequently neglected of any rule of composition.

It is, that *wherever the law is intended to operate only in certain circumstances, those circumstances should be invariably described BEFORE any other part of the enactment is expressed.*

If this rule were observed, nine-tenths of the wretched provisos, and after-limitations and qualifications with which the law is disfigured and confused, would be avoided, and no doubt could ever possibly arise, except through the bad choice of terms, as to the occasions in which the law applied, and those in which it did not. It is beyond a doubt that the *casus legis*, which can be described in a proviso, or in a phrase interpolated into other matter by way of limitation, can be more easily expressed alone, and at the beginning of the enactment. It is equally beyond a doubt that its proper place is at the beginning, and that it is misleading the reader to commence an enactment as if it were universal, and to wind it up by a parenthetical qualification or proviso which limits it to certain occasions only.

As the law is only to operate when the supposed case arises, the proper language to express it would be *subjunctive* language, as ‘if any person be.’ But as subjunctive language cannot be distinguished from conditional, and as conditional language is more specifically necessary for the expression of *the conditions* (to be hereafter referred to), it would appear to be better, in describing *the case*, to use the still more ordinary language of *the indicative* mood.

Where any person *is* aggrieved by any rate, or *has* any material objection, &c.

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Where notice of appeal *has been given* in writing, &c.

Nevertheless in any case in which no notice of appeal *has been given* in writing, &c.

This indicative language describing the case as *now* existing, or as having *now* occurred, is consistent with the supposition of *the law being always speaking*; and its use may, on this supposition, be justified, to the exclusion of subjunctive language, which is less popularly used, and is more wanted elsewhere.

But subjunctive language ought, at all events, to be used in preference to the ordinary absurd form—

Where any person *shall* find himself aggrieved,

If notice of appeal *shall* have been given,

a form which confounds the proper language of obligation with that of hypothesis, depriving the former (the peculiar language of the law) of its force, and often leaving a doubt whether the action described is one merely supposed as a case or condition, or one imperatively required to be performed.

It would add much to the facility of discovering *the case* immediately in every legal sentence, if it invariably commenced with the words 'when' or 'where' or 'in case'.

The Appendix affords, it is hoped, a multitude of instances of the clearness resulting from the invariable statement of the *casus legis* before any other part of the enactment. Comparison with the originals would prove the wideness of the difference between the ordinary practice and what is easily attainable, by observing the proposed rule.

The following are a few selected instances of the application of this rule:—

POOR'S RATE.

134 b.

1st Case	If the 'parish' be in a county.
Legal Subject	'TWO JUSTICES' (19, 21), whereof one to be of the <i>quorum</i> , dwelling in or near the division where the 'parish' doth lie,
Legal Action	<i>shall</i> allow the rate.
	43 Eliz., c. 2, s. 1. 13 & 14 Car., c. 12, s. 17.
2d Alternative Case	Or if the 'parish' be wholly within an exclusive jurisdiction

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<i>Legal Subject</i>	'TWO JUSTICES' of that jurisdiction
<i>Legal Action</i>	<i>shall</i> allow the rate. 43 <i>Eliz.</i> , c. 2, s. 8.
3d Alternative <i>Case</i>	Or if a parish lie within two places of concurrent jurisdiction,
<i>Legal Subject</i>	'TWO JUSTICES' of either jurisdic- tion, or one of the one jurisdic- tion and one of the other,
<i>Legal Action</i>	<i>shall</i> allow the rate. 43 <i>Eliz.</i> , c. 2, s. 8.
4th Alternative <i>Case</i>	Or if a parish lie within two places of exclusive jurisdiction,
<i>Legal Subject</i>	'TWO JUSTICES' at least of each such jurisdiction
<i>Legal Action</i>	<i>shall</i> allow the rate. 43 <i>Eliz.</i> , c. 2, s. 9.

POLICE RATE.

26

<i>Case</i>	When the justices of the peace of any 'county,' assembled at 'quarter sessions,' have agreed that the ordinary officers ap- pointed for the preservation of the peace are not sufficient for the preservation of the peace, the protection of the inhab- itants, and the security of prop- erty with the county, and when they have set forth the same, and have declared how many constables are in their opinion needed for the afore- said purposes, and what rates of payment it would be expedi- ent to pay to the chief and other constables, and when such re- port has been sent to one of Her Majesty's principal secretaries of state, 2 & 3 <i>Vic.</i> , c. 93, s. 1. and when one of Her Majesty's principal secretaries of state has made, 2 & 3 <i>Vic.</i> , c. 93, s. 3.
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and finally settled,
 2 & 3 Vic., c. 93, s. 4.
 any rules for the government,
 pay, clothing, accoutrements,
 and necessities of such con-
 stables;
 2 & 3 Vic., c. 93, s. 3.
 and when such rules, as finally
 settled, (?) have been received
 from the Secretary of State,
 2 & 3 Vic., c. 93, s. 4.
 by the clerk of the peace of such
 'county,'
 2 & 3 Vic., c. 93, s. 4.

Legal Subject THE SAID JUSTICES

Legal Action may
 appoint a chief constable, &c.
 2 & 3 Vic., c. 93, s. 4, &c.

COUNTY RATE.

129 c.

Case Where any 'parish or place' is sit-
 uated in and extends into two
 or more counties, ridings, or
 divisions, having separate and
 distinct commissions of the
 peace,
 and where the messuages, lands,
 tenements, and hereditaments
 in such 'parish or place'
 are rateable to the relief of the
 poor therein, .
 and to the county rates of the
 respective counties, ridings,
 or divisions in which such
 messuages, lands, tenements
 and hereditaments are re-
 spectively situated;
 and where no separate 'overseers'
 are appointed, and no separate
 rate is made for the respective
 parts of such 'parish or place,'
Legal Subject ALL THE POWERS, provisions,
 clauses, pains, penalties, and
 forfeitures given, granted,
 made, and imposed by any Act
 relating to county rates

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Legal Action..... *shall*
 apply, and extend, to all intents
 and purposes, to the respective
 parts of such 'parish or place.'
 1 & 2 *Geo.* 4, c. 85, s. 1.

COUNTY RATE.

154

Cases When any 'overseer' of any 'parish,' or the petty constable or peace officer,
 12 *Geo.* 2, c. 29, ss. 3, 4, 12.
 or other inhabitant of any 'place,'
 where there is no 'overseer' or
 person appointed to act as
 such,
 55 *Geo.* 3, c. 51, s. 14.
 has reason at any time to believe
 that the said 'parish' or 'place'
 12 *Geo.* 2, c. 29, s. 12.
 55 *Geo.* 3, c. 51, s. 14.
 is aggrieved by any county rate,
 whether on account of the propor-
 tions assessed on the respective
 'parishes' or 'places' being
 unequal;
 or on account of some one or
 more of them being, without
 sufficient cause, omitted alto-
 gether from the rate;
 or on account of such 'parish' or
 'place' being rated at a higher
 proportion of the pound ster-
 ling, according to the fair an-
 nual value of the rateable prop-
 erty therein, than that declared
 by the justices in sessions as the
 basis of the rate;
 or on account of some other 'parish'
 or 'parishes,' 'place' or
 'places,' being rated at a lower
 proportion of the pound ster-
 ling, according to the fair an-
 nual value of the rateable prop-
 erty therein, than that declared
 by the justices in sessions as the
 basis of the rate;

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	or on account of any other just cause of complaint whatsoever, 55 <i>Geo.</i> 3, c. 51, s. 14.
<i>Condition</i>	if such 'overseer,' constable or peace officer, or other inhabitant, give 14 clear days' notice, in writing, of the intention to try such ap- peal at the general or quarter sessions, to the parties against whose rate the appeal is to be made, and to the clerk of the peace of the county, and to the hundred constable, 57 <i>Geo.</i> 3, c. 94, s. 2.
<i>Legal Subject</i>	SUCH 'OVERSEER,' constable or peace officer 12 <i>Geo.</i> 2, c. 29, s. 12. or other inhabitant or person,
<i>Legal Action</i>	<i>may</i> 55 <i>Geo.</i> 3, c. 51, s. 14. appeal against such part of the rate only as may affect the 12 <i>Geo.</i> 2, c. 29, s. 12. 55 <i>Geo.</i> 3, c. 51, s. 14. 'parishes or places' which are unequally rated, or which appear to be over-rated, or under-rated, or omitted altogether from the rate, 55 <i>Geo.</i> 3, c. 51, s. 14. to the justices of the peace at their next general or quarter sessions, 12 <i>Geo.</i> 2, c. 29, s. 12.

The Conditions.

A LAW universal as to its subjects, and restricted or not restricted to certain occasions (*cases*), may still operate only upon the performance by some person of certain *conditions*. It

4. *the Conditions.*

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is not till something has been done that the right can be enjoyed, or that compliance with the obligation can be enforced, or that the liability can be applied.

These *conditions* are invariably conditions precedent. The action of the law never takes place till these are complied with. No such thing as the so-called conditions subsequent or executory can be conceived to apply to a legal action.

Importance of the expression of the conditions;

The expression of *the condition* is of very high importance. A condition is sometimes expressed as the condition of acquiring or enjoying a right; if in this case it exceeds, by the smallest particle, what is necessary to the condition, it will so far prohibit the enjoyment of the right. Conditions are more frequently expressed as the conditions of enforcing an obligation on another; if in these cases the condition is in any respect more stringent than necessary, it so far prevents the enforcement of the obligation; on the other hand, every word by which the condition is made less stringent makes the obligation more so, and renders the law unnecessarily hard, by imposing obligations of an extent disproportionate to the value of the right to which they subserve. But conditions are still more frequently used to determine the occasions on which the powers of Courts of Justice and public officers are to be used: in this case, if the condition be expressed too widely, it paralyses the use of the power; if it be not extensive enough, it affords unnecessary occasions and pretexts for the exercise of such powers, making their intervention meddlesome and arbitrary. The absence or vagueness of conditions upon the exercise of powers is the characteristic of all arbitrary institutions. On the other hand, the imposition of unimportant formalities as the conditions of the exercise of public powers, constitutes for the most part the history of the decay of institutions, the origin of sinecures, and, above all, the obsolescence of remedies, and with them of the rights for the protection of which the remedies had been provided. We have a lamentable example of this in the English law, in the loss of civil remedies for a large class of injuries now left to be redressed only by resorting to coarse and inefficient penal vindications.

—rule for the expression of the conditions.

It seems superfluous to say that the proper language of a condition is the conditional,

If he give notice, he may, &c.

Unless he give notice he shall not, &c.

but the practice in drawing bills disregards this rule much more frequently than it conforms to it — indeed defies all rule;

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the most common mode of expression is equally regardless of grammatical principle, popular custom, or force of expression; it is —

if he shall insist on the same,

if, upon the hearing, *the Court shall order* any rate to be set aside,

if it shall appear to the said Court.

This is almost the universal formula. What the ‘*shall*’ is to effect it seems impossible to conceive. The language in all such cases becomes correct and expressive by the simple omission of the ‘*shall*.’

if he insist,

if the Court order,

if it appear, &c.

This misuse of ‘*shall*,’ in a condition, is not only objectionable in itself, but it always deprives the obligatory language of the legal action, where the ‘*shall*’ is in its proper place, of its due force; it often does even worse, inasmuch as it seems to convert a condition which may be performed or not at the will of a party according as he wishes or not to secure the benefit of the enactment, into a positive command, as

Fourteen clear days’ notice in writing *shall* be given by the parties intending to appeal, &c.

—where the meaning merely is that ‘if 14 days’ notice be given, the party may appeal,’ or ‘unless 14 days’ notice be given, the appeal shall not be received.’*

There may be many distinct conditions imposed. In this case the conditions are never to be performed simultaneously. The order of their performance in time ought to be carefully observed in expressing them; so that the person, or several persons, on whom they are imposed may see the order in which to proceed to realize all the conditions of the legal action, and may be in no doubt when those conditions are all

Order of
expression for
several conditions.

*The mischief of the misuse of ‘*shall*’ is often much greater than is indicated by the above instances. There are innumerable examples where it is impossible to tell, from the language itself, whether the law is merely describing something, or is imposing a condition, or is really issuing a command. The context sometimes helps to the determination of the effect; but very often even this affords no light to the construction; for instance, in the 29th section of the Poor Law Amendment Act (4 & 5 Wm. 4, c. 76) the word ‘*shall*’ occurs in two consecutive phrases, ‘the poor of such parishes who *shall* be maintained or relieved in or out of any workhouse of such union, for which each such parish *shall* in future be charged separately.’ The first ‘*shall*’ is in a phrase which the context shows to be descriptive merely; upon the second ‘*shall*’ a most important consequence depends: if it be descriptive like the first, it causes the burden of the whole maintenance of the poor in a Union to fall in a manner exactly the contrary of that in which it will fall if the word ‘*shall*’ be imperative.

APPENDIX I

complied with. For the reason that the legal action is postponed and cannot act upon the legal subject, until these conditions are all complied with, *the expression of the conditions ought immediately to precede that of the legal subject.*

The natural place and the order of succession of *the conditions* are seen in such examples as the following:—

COUNTY RATE.

305

<i>Case</i>	Where any person seeks to remove any rate made in pursuance of this Act, or to remove any order or other proceeding made or taken by the general or quarter sessions touching any such rate,
<i>1st Condition</i>	unless the motion be made in the first week of the next term after the time for appealing from such rate or order is expired; 12 <i>Geo. 2, c. 29, s. 21.</i>
<i>2nd</i>	nor unless such motion be made within six calendar months after such (rate?) order or proceeding made or taken;
<i>3rd</i>	nor unless the party suing for the same hath given six days' notice thereof in writing to the justices, or to two of them, if so many there be, by whom such order or proceeding was taken, to the end that such justices, or the parties therein concerned, may, if they think fit, show cause against the granting of such certiorari;
<i>4th</i>	nor unless the giving of such notice be duly proved on oath; 13 <i>Geo. 2, c. 18, s. 5.</i>
<i>5th</i>	nor unless it be made to appear to the court, by affidavit or otherwise, that the merits of the question upon such (rate) appeal or order (or proceeding) will, by such removal, come properly in the judgment of the said court;

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6th..... nor until sufficient security be
given to the treasurer of the
county, in the sum of 100 £, to
prosecute such writ of certiorari
with effect, and to pay the costs,
to be ascertained by the court,
in case such rate or order (or
proceeding) be confirmed.

12 Geo. 2, c. 29, s. 21.

Legal Subject..... NO SUCH WRIT of certiorari

Legal Action..... shall

be granted

12 Geo. 2, c. 29, s. 21.

13 Geo. 2, c. 18, s. 5.

POOR'S RATE.

156

<i>1st Condition</i>	Unless the notice of appeal against any rate made for the relief of the poor be in writing.
<i>2nd</i>	and unless it state and specify the particular grounds or causes of appeal (154)
<i>3rd</i>	and unless it be signed by every person giving the same or by his attorney on his behalf;
<i>4th</i>	and unless it be delivered to the ‘overseers’ of the ‘parish’ or to any two of them, or be left at their places of abode;
<i>Legal Subject</i>	THE ‘JUSTICES’ at such sessions (154)
<i>Legal Action</i>	<i>shall not</i> receive such appeal

41 *Geo.* 3, c. 23, s. 4.

There is another striking example in the specimen at page 199.

EVERY FORM of every possible legislative enunciation resolves itself into two or more of these four elements, of which *the legal subject* and *the legal action* are essential, and must necessarily be present, while *the case* or *the condition* may or may not be present.

Recapitulation.

If the enactment is to operate on its subject universally, constantly, and unconditionally, the sole elements are the *legal subject* and the *legal action*.

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If the enactment is only to operate on its subject in certain circumstances, *the case* must express these circumstances in *the first words of the sentence*, and not in a subsequent phrase inserted parenthetically in the description of the subject or the action, nor in a separate proviso.

If the enactment is only to operate on its subject after performance by somebody of certain precedent conditions, these *conditions should be all expressed immediately before the legal subject, and in the order in which they must be executed*; that is, in their chronological order.

Next comes the *legal subject*, immediately followed by the appropriate modal *copula*, introducing the *legal action*.

advantages of this order; of—

THE SPECIFIC IMPORTANCE of each of these several elements of a legal sentence has been adverted to above, but the importance of observing invariably the order of expression of 1st, the *case*; 2nd, the *conditions*; 3rd, the *legal subject*; 4th, the *legal action*, is still to be pointed out.

—the Cases first;—

The case being placed first, the first few words of the sentence answer immediately to the inquirer, whether his case is included in the provision or not; whether he need read on, or should proceed to seek the law applicable to his circumstances in another clause. Suppose, for instance, these are the words:—

<p><i>Case</i>.....</p>	<p>Where any Quaker 7 & 8 Wm. 3, c. 34, s. 4. refuses to pay any church rates, or any customary or other rights, dues, or payments belonging to any church or chapel, or which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating therein. 1 Geo. 1. stat. 2, c. 6, s. 2.</p>
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—it is evident that no person who knows the circumstances of any case can doubt whether the law presently to be expressed applies to his case or not; he can at once determine (if the case is thus expressed at the threshold, and he is not to be balked by some subsequent limitation of the law to some more special case, by some subsequent parenthetical phrase or proviso, or some clause somewhere else in the statute) whether he has or has not before him the law he seeks.

—the Conditions next;—

Having ascertained that there is law applicable to his case,—he next learns what is to be done to make it operative;

COODE ON LEGISLATIVE EXPRESSION

this he learns from the *conditions* which follow immediately upon the case, and precede the expression of the law,—

Conditions..... if any churchwarden or other person who ought to receive or collect the same complain thereof,
7 & 8 Wm. 4, c. 34, s. 4.
and if such Quaker have reasonable warning of such complaint:

¹ *Geo.* 1, *stat.* 2, c. 6, s. 2.

—here, whether complainant or defendant, he sees at once all the requisites to make the law operate in the case. Whoever seeks to make the law operate proceeds to do the things required as conditions in the order in which they are prescribed, and these being done, the right of the claimant and the liability of the defendant and the duty of the functionary are complete,—the law has now only to operate functionally.

The *legal subject* describes the person now enabled or commanded to act.—*—the legal Subject*
next;

Legal Subject..... ONE OF THE NEXT JUSTICES of the
peace,

53 *Geo.* 3, c. 127, s. 6.

of the same county,

1 Geo. 1, stat. 2, c. 6, s. 2.

other than such justice of the
peace as is patron of such
church or chapel:

¹ *Geo.* 1, *stat.* 2, c. 6, s. 2.

—here will be found determined all the persons who, in the case, and on performance of the conditions prescribed, are immediately authorised, obliged, or prohibited by the legal action. The suitor, the defendant, the Court itself, all look here to see that the Court (or other *legal subject*) is competent. The Court finds from its description here, as the *legal subject*, that it has or has not jurisdiction in *the case*; it finds whether it is yet empowered to act or not, according as *the conditions* have or have not been complied with.

The case before the Court (or other legal subject) is seen to be the case described in the statute; the conditions as prescribed are executed; the Court (or other legal subject) is recognised as conforming to its description, and is therefore competent; now comes *the legal action*;—

Legal Action..... may
by warrant under his hand and
seal, summon such Quaker

APPENDIX I

before the two next justices of the peace,

of the same county:

7 & 8 Wm. 3, c. 34, s. 4.

—here the Court (or other *legal subject*) finds what by law it is required to do, to summon, convict, execute, or what else.

—applied to legal procedure.

APPLY THE ABOVE to the oral or documentary proceedings in any Court, and the advantage of this mode of expressing the law will be at once apparent. Suppose the complaint is to be made, the complainant has nothing to do but look at the case and conditions, to word his complaint so as to include the very words of the statute, filling in his own and the defendant's personal description and the necessary dates and places. Nothing can be simpler than this process; when done no astuteness can successfully impugn it.

Consider on the other hand the defence. The defendant or other antagonist has only to show in his defensive allegation, his plea, or other appropriate answer, that the case is other than *the case* described in the statute, and he ousts the jurisdiction of the Court, or the competence of the other *legal subject*; or he has only to show that the prescribed *conditions* have not been complied with, and he justly and inevitably defeats the complaint, the declaration or other allegation of the pursuing party.

Next as to the decision—the Court recites in it the very same words in which the case is described, that the conditions in the words of the statute were performed, or that they or some of them were not; it describes itself by the use of the very terms of the legal subject, by which the competence of the tribunal is established in terms which can only be successfully attacked by defeating the statute itself; the Court now proceeds to execute its authority, to convict or to give its decision or judgment, using the very words of the *legal action*, and abstaining from everything going beyond those words.

At every stage the proceedings would thus run parallel, *pari passu* with the words of the statute, in a manner which would greatly diminish the perplexity of all who have only to obey or execute the law.

Combination of distinct Enactments.

THUS FAR the construction of a separate enactment has been considered. Usually, a statute, and every section of a statute consists of several of these enactments.

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Any number of legal subjects can be enumerated cumulatively with 'and,' or alternately with 'or,' as the subjects of any one legal action. This requires no example.

Where many *legal actions* are to apply to the same *legal subject*, or class of subjects, one description of the legal subject may be followed by any number of legal actions;* but these legal actions should be kept distinct by the use of distinct copulae, and they should follow one another in the order in which they are to take place; not, for instance, directing justices 'to order and ascertain the proportions of rate to be paid,' as if they were to 'order' it first and 'ascertain' it afterwards (12 *Geo. 2, c. 29, s. 5*). The following are examples of one legal subject and a succession of legal actions;—

POOR'S RATE.

99

<i>Case</i>	Whenever it is made to appear to the Poor Law Commissioners, by representation in writing from the Board of Guardians of any Union or 'parish,' under their common seal, or from the majority of the 'overseers' or other officers competent to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes (95 b.) cannot be made without a new valuation,
<i>Legal Subject</i>	THE POOR LAW COMMISSIONERS,
<i>1st Legal Action</i>	may where they see fit, order a survey, with or without a map or plan, on such a scale as they think fit, to be made and taken of the messuages, lands, and other hereditaments, in respect of which persons are liable to be rated to the poor's rate,

*Two or more distinct legal subjects, and two or more distinct legal actions, should never be brought together in the same sentence by means of the same copula. This always renders the meaning obscure, and causes the frequent necessity for the application of the process *referendi singula singulis*. It is proposed by a local Act to pave the town of Brighton and to manage its poor: the purpose is described to be *to manage and pave the town of Brighton and the poor thereof*, as if the poor were to be paved.

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	in such parish, or in all or any one or more parishes of such a union;
<i>2nd</i>	and <i>may</i> (order) a valuation to be made of the said messuages, lands, hereditaments, according to their annual value,
<i>3rd</i>	and <i>may</i> direct such guardians to appoint a fit person or persons for making and taking every such survey, map or plan, and valuation, and to make provision for paying the cost of every such survey, map or plan, and valuation, either by a separate rate, or by a charge on the poor's rate, as they may see fit. 6 & 7 Wm. 4, c. 96, s. 3.

POOR'S RATE.

121

<i>Cases</i>	Where there is any question between any 'parishes' touching the boundaries of such 'parishes,' or where such parishes are desirous of having such boundaries ascertained, or a new boundary line defined;
<i>Condition</i>	if a majority of not less than two-thirds in number and value of the landowners of such parishes make application in writing;
<i>Legal Subject</i>	THE TITHE COMMISSIONERS for England and Wales, or any of their Assistant Commissioners,
<i>1st Legal Action</i>	<i>may</i> deal with any dispute or question concerning such boundaries,
<i>2nd</i>	and <i>may</i> ascertain, adjust, set out, and define the ancient boundaries between such parishes,

COODE ON LEGISLATIVE EXPRESSION

3rd	or may draw and define a new line of boundary as they may see fit.
<i>Legal Subject</i>	And ALL THE POWERS given to the Tithe Commissioners or Assist- ant Commissioners
1st <i>Legal Action</i>	shall extend,
2nd	and shall so far as the same may, in the judgment of the Commission- ers or Assistant Commissioners, be applicable to such question, be applied by them thereto. 2 & 3 <i>Vic.</i> , c. 62, s. 34.

HIGHWAY RATE.

266

<i>Legal Subjects</i>	EVERY SURVEYOR, district surveyor, and assistant surveyor,
1st <i>Legal Action</i>	shall within 14 days after the appoint- ment of the new surveyor, make up his accounts for the year preceding in writing,
2nd	and shall sign and balance them, 5 & 6 <i>Wm.</i> 4, c. 50, s. 44.
3rd	and shall, within one calendar month sign and lay them before the jus- tices at a special session, 5 & 6 <i>Wm.</i> 4, c. 50, s. 39.
4th	and shall, within 14 days after leaving his office, deliver his accounts, verified before justices at special sessions, 5 & 6 <i>Wm.</i> 4, c. 50, s. 42.

POOR'S RATE.

280 a.

If such justices think fit,
THEY shall
examine into the matter of every
such account,

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and *shall*
disallow
and strike out of every such
account
all such charges and payments as
they deem to be unfounded,
and *shall*
reduce such as they deem to be
exorbitant,
and *shall*
specify, upon, or at the foot of
such account,
every such charge or payment,
and its amount, so far as such jus-
tices may disallow or reduce
the same,
and the cause for which the same
is disallowed or reduced;
and *shall*
signify their allowance and
approbation
of every such account
under their hands;
and *shall*
sign and attest the caption of the
same
at the foot of the account,
without fee or reward.

50 *Geo.* 3, c. 49, s. 1.

Sometimes one general *legal action* is provided with a variety of differences adjusted to a variety of different *cases*. No course is so clear as that of describing in succession each *case*, and repeating the *subject* and *action*;—as—

POOR'S RATE.

134

THE 'OVERSEER,' or the greater
part of them,
shall
take order
from time to time
with the consent (allowance) of
'two justices' to raise the rate.

43 *Eliz.*, c. 2, s. 1.

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b. If the 'parish' be in a county,
'TWO JUSTICES' (19, 21),
whereof one to be of the *quorum*,
dwelling in or near the division
where the 'parish' doth lie,
shall
allow the rate.

43 *Eliz.*, c. 2, s. 1.

13 & 14 *Car.* 2, c. 12, s. 17.

Or if the 'parish' be wholly within
an exclusive jurisdiction
'TWO JUSTICES' of that jurisdiction
shall
allow the rate.

43 *Eliz.*, c. 2, s. 1.

Or if a parish lie within two places
of concurrent jurisdiction,
'TWO JUSTICES' of either jurisdic-
tion, or one of the one jurisdic-
tion and one of the other,
shall
allow the rate.

43 *Eliz.*, c. 2, s. 8.

Or if a parish lie within two places
of exclusive jurisdiction,
'TWO JUSTICES' at least of each
such jurisdiction
shall
allow the rate.

43 *Eliz.*, c. 2, s. 9.

Parliamentary considerations favour the accumulation of materials into one clause. But as a question of composition and interpretation, there can be no doubt that the more strictly each clause is limited to one class of *cases*, one class of *legal subjects*, and one class of *legal actions*, the better; and that it is a mischief to confer in one sentence two distinct species of rights, to impose two distinct kinds of obligations, to confer two distinct kinds of powers, and so on: where parliamentary convenience does not prevail, no good draftsman ever does so.

Contents of a
single clause.

General application to the occasions of Legislation.

TO REVERT to the subject before adverted to, the facilitating of the work of legislation, the enabling of the Legislature to apply a special rule to the most special and minute cases, the

Composition of
special
enactments.

APPENDIX I

making of the law apt and flexible, if the above analysis be correct, it will appear that intricacy of expression is neither an aid to speciality in legislation, nor a necessary consequence of it.

It has been made to appear that however various *the cases* to which the law applies, each is severally simple; and if each be expressed singly, and in immediate succession, and not involved with other elements of the legislative sentence, the task of composition will be easy. Again, however various *the conditions*, each will be in itself simple; and if all be expressed in the order of their performance, it will more often be found that the one throws light on the other than that the one obscures the other. Again, as to the *legal subjects*, there is no limit to the number which may be enumerated or described one after another; and here also one subject will often throw a light on another with which it is associated. So of *legal actions*, they may be added one after another with perfect intelligibleness, if the order of their chronological succession be observed, and if the stages of their operation be indicated by prefixing to each new legal action a description of the incidental case.

—Amendments in
Bills.

IT WILL HENCE BE SEEN that this order of expression involves no impediments—but rather affords facilities for the introduction, during the progress of a Bill, of amendments analogous to the original matter. If another *case* is to be included, its place is obvious; if some case is to be excepted, again nothing is easier than to insert amongst the cases the description of the exception. If further *conditions* on the action are required, the place for them is apparent. If the extent of the law is too narrow or too wide, *the legal subject* presents itself distinctly to be enlarged or restricted. If legislation be admitted to be required for the cases on the conditions expressed, and in respect of the legal subjects enumerated, but the nature or quality of the legislation be in question, that question is limited to *the legal action*. A little attention will convince the reader, that if the essential parts of legal sentences were kept distinct and conspicuous in a Bill, the difficulty of criticising a measure while in its progress through Parliament must be greatly diminished: that it would be comparatively easy to show the excesses or omissions of each enactment, and to call the promoters of a Bill to account; while it must be in the same degree difficult for sophistry to cast a doubt about the elements of a measure, all of which were exposed so simply and conspicuously. The question of a member, For what case does this enactment apply? or, Is this enactment absolute and without

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condition? or, Who is to have this right,—to be compelled to this sacrifice,—to exercise this authority? or, When, where, and how, is it to be exercised? calls attention at once to the enunciation of *the case, the condition, the subject, the action*, respectively. The smallest inconsistency between the answer of the conductor of the Bill, and the expression in the Bill of either of these elements, will at once compel the insertion of modifications accordant with his explanations. The unfair and unavowable legislation which now sometimes passes in the confusion of an intricate phraseology, would be prevented at once.

The mere literary composition of a statute will, by fixing the attention on these elements, be as much facilitated as its interpretation will afterwards be. The multitude of instances to be found in the following appendices, or those cited as examples in the present suggestions, where modifications and amendments of an original law have been made by a series of subsequent Acts, which modifications and amendments are fully expressed by a word or phrase interpolated in *the case, the condition, the subject, or the action*, will serve to prove beyond a question the facility with which the like modifications and amendments might, if they have been thought of, have been introduced either in the original draft of the Bill, or in its course through Parliament. The compiler may, perhaps, be allowed to adduce his further personal experience, that in making a compilation of the whole of the Statute Criminal Law in force before the year 1833, and the whole of the Poor Law Statutes passed from the beginning of George III.'s reign till the year 1840, no single instance occurred to him in which the statement of what he understood to be the law, in the very terms of the law, was not perfectly easy on the plan proposed.

On the other hand, it is a matter of astonishment that expressions so intricate as those in which the law is now ordinarily expressed can ever be brought to a grammatical close. It requires the most consummate skill in language to interweave cases, conditions, subjects, and actions, with all their limitations, exceptions, qualifications and consequences into one sentence; and when it is considered that this is sometimes done in a phraseology which is not English, it passes comprehension how the draftsman could ever get through his task. In such instances as the following, it will be seen, by comparing the original statement with the re-statement in the summary, how a wonderful ingenuity in making and threading a maze of language is only thrown away, and how a much more humble amount of skill would be sufficient to effect all the purposes in a much more satisfactory manner.

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Original.

The numbers indicate what should be the order.

<i>1st Copula</i> , first fragment.	<i>It shall be lawful</i>
<i>1st Legal Subject</i>	to and for the justices of the peace of any county, or the major part of them, in general or quarter sessions, or at any adjournment or adjournments thereof assembled.
<i>1st Case</i>	as often as they <i>shall have</i> deemed it necessary to make a rate or rates, assessment or assessments, on all the rateable property within the limits of their jurisdiction, according to the fair annual value of the same, as derived from any or all of the several sources of information which are hereinbefore mentioned;
<i>1st Copula</i> , second fragment	<i>and they are hereby authorized and empowered</i>
<i>1st Legal Action</i>	to order warrants to be from time to time issued in the same manner as now authorized and practised by law for collecting the county rates,
	to the several high constables within their respective counties, ordering and requiring them
<i>2nd Legal Action</i>	to issue their warrants to the respective overseers of the poor within their respective divisions to levy, collect, and pay to the said high constables,
	within the time to be named and limited in the warrant to be issued from the sessions as aforesaid,
	all such rate or rates, assessment or assessments,

COODE ON LEGISLATIVE EXPRESSION

Amended Statement.

County Rate.

196

When the justices of the peace in general or quarter sessions have made a rate,

THEY shall

from time to time

issue their warrants

to every high constable within the county,

requiring him, at a time to be specified in the warrant,

to collect the same from the overseers within his division,

and to pay the same to the treasurer of the county at a time to be named in the warrant.

a. When the high constable has received the warrant of the justices at quarter sessions,

HE shall

issue his warrants

to the respective overseers (and other persons required to act as overseers) within his division,

requiring them to levy and collect such rate, and to pay the same to him,

within the time named in the warrant of the justices,

and at such a time as he may specify in his warrant,

c. SUCH OVERSEERS,

or other persons appointed to act as overseers,

shall

levy and raise

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Original.

<i>6th Legal Subject and Action</i>	which each high constable <i>shall and he is hereby directed and required</i> to pay
expressed parenthetically.	at such time as shall be specified in such warrant,
	to the treasurer of the county for the time being,
<i>7th Legal Subject and Action</i>	to be applied and disposed of in such manner and for such purposes as the county stock or rate is now applicable, or may hereafter be made applicable by law;
<i>—Case to the 7th Legal Action</i>	And in case any overseer or overseers of the poor, or other person appointed to act as such under the provisions of this Act, in any of the several parishes, townships, or places, whether parochial or otherwise, within any county liable to pay the same,
	<i>shall</i> neglect, make default, or refuse to pay the same, within the time to be specified and limited for that purpose as aforesaid, to the high constable of the division within which such overseer or overseers, or other person or persons so liable and neglecting to pay, shall reside or be appointed to act,
<i>Copula</i>	<i>it shall and may be lawful</i>
<i>Legal Subject</i>	for any justice of the peace of the said county,
<i>Condition</i>	upon complaint thereof made by any such high constable,
<i>5th Legal Action</i>	by warrant under the hand and seal of any such justice, to levy the same by distress and sale of the offender's goods;

COODE ON LEGISLATIVE EXPRESSION

Amended Statement.

by an equal rate or assessment upon the estates and property rateable to the relief of the poor within their respective 'parishes' or 'places,'

such sums of money as may be necessary to raise the county rate assessed on such 'parishes' or 'places,'

or as may be necessary to reimburse such overseers or other persons such sums of money as they may respectively have paid on account of such county rate.

And THE OCCUPIERS for the time being of such estates and rateable property, (and the inhabitants, parsons, vicars, and others liable to be rated to the relief of the poor?)

shall

pay such rate,

197

If any 'overseer'

or other person appointed to act as such in any 'parish' or 'place' (*f.g.h.*),

neglect, make default, or refuse

to pay the sum of money

assessed on his 'parish'

or 'place,'

at the time specified in the warrant of the high constable (196 *a. b.*);

and if such high constable make complaint thereof before any one justice of the peace

SUCH JUSTICE

may,

by warrant under his hand and seal,

levy the same

APPENDIX I

Original.

<i>Legal Subject</i>	And the overseer or overseers of the poor of any parish, township, or place, whether parochial or otherwise, or other person or persons appointed to act as such overseer or overseers,
<i>Copula</i>	<i>shall, and may, and is, and are hereby empowered</i>
<i>3rd Legal Action</i>	to levy and raise by an equal rate or assessment upon all and every the several estates and property rateable to the relief of the poor, within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary, in order to raise the several sums assessed upon such parishes, townships, or places respectively, or to reimburse such overseer or overseers, or other person or persons as aforesaid, such sum or sums of money as they shall respectively have paid on account of the same;
<i>4th Legal Action</i>	such rate or assessment to be paid
<i>4th Legal Subject</i>	by the occupier or occupiers for the time being of such estates and rateable property as aforesaid.

55 *Geo. 3, c. 51, s. 12.*

COODE ON LEGISLATIVE EXPRESSION

Amended Statement.

by distress and sale of the goods and chattles of the 'overseers,'
or either of them,
or of any such other person appointed to act as overseer,
rendering to the owner thereof the overplus,
if any there be, after deducting the money assessed and the
charges of distress and sale.

249

When the high constable has received the rate from the overseers, or from the other persons required to pay the same
(196 c.)

and when the time specified in the warrant of the justices has
arrived

HE *shall*

pay it to the treasurer of the county.

252

THE SUMS OF MONEY paid into any treasurer's hands, by virtue of
his appointment

shall

be deemed and taken to be the public stock.

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Remarks on the Abuse of Provisoes.

Occasions for Provisoes.

IT IS MOST DESIRABLE that the use of provisoes should be kept within some reasonable bounds. It is indeed a question whether there is ever a real necessity for a proviso. At present the abuse of the formula is universal. Formerly they were used in an intelligible manner;—where a general enactment had preceded, but a special case occurred for which a distinct and special enactment was to be made, different from the general enactment, this latter enactment was made by way of proviso. For instance, the 43 Eliz., c. 2, having made dispositions for the relief generally of the poor in all parishes in England, proceeds by way of proviso to make a special enactment for the Island of Foulness, in Essex, adapted to its special circumstances. The proviso might still be legitimately used on the same plan, of taking special cases out of the general enactments, and providing specially for them.

Interpretation of Provisoes.

Nothing has inflicted more trouble on the judges than the attempt to give a construction to provisoes. The Courts have generally assumed, in accordance with the old practice just described, that a proviso was a mode of enactment by which the general operation of a statute was excluded in favour of some case. There are, therefore, in their decisions, various distinctions propounded between mere exemptions, or excep-

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tions, or salvoes and proper provisoes. But it is admitted by all writers, to be impossible to make any general application of the doctrines laid down by the Courts to the multitude of cases in which the formula of a proviso has been adopted. Where the form of a proviso in fact serves only to make a mere exception, how can a doctrine which distinguishes a proviso from an exception apply? And what common doctrines of interpretation can possibly be applied to the innumerable provisoes used in our statutes only as formulae for heaping together matter wholly unconnected, or only so remotely connected as to be incapable of being combined with the rest, by the use of any form of speech of a settled meaning?

The present use of the proviso by the best draftsmen is very anomalous. It is often used to introduce mere exceptions to the operation of an enactment, where no special provision is made for such exceptions. But it is obvious that such exceptions would be better expressed as exceptions; if particular cases were excepted, to be expressed in *the case*; if particular conditions were dispensed with, to be expressed in *the condition*: if certain persons were to be excluded from the operation of the enactment, to be expressed in *the subject*. In fact, where the enunciation of the general provision is merely to be negatived in some particular, the proper place for the expression of that negation is by an exception expressed in immediate contact with the general words by which the particular would otherwise be included. This would make, in all cases, the definition of the case, condition, subject, or action, complete at once, that is to say, it would show in immediate contact all that is included and all that is excluded.

Present use of
Provisoes;—

—as exceptions;

Bills, in other respects well drafted, often use provisoes to limit to some particular case or cases, an enactment stated at first in general terms. This is merely to displace and disguise *the case*. Sometimes provisoes are used to introduce a condition on the general enactment—a displacement and disguise of

—to define *the case*,—
—or *the condition*,—
—or *the legal subject*,—

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the condition; sometimes they define the persons on or through whom the enactment is to operate – a displacement and disguise of *the legal subject*; sometimes they determine the time, place, manner, or circumstance of the operation of the enactment – a displacement and disguise of *the legal action*.

—or *the legal action*;—

Another common use of provisoes is to introduce the several stages of consecutive operations. In such cases the words “provided always” are mere surplusage, or should be replaced by the conjunction “and”.

—to mark succession;—

Worse than all the above anomalies, however, is the use commonly made by ordinary draftsmen of the proviso. Whenever matter is seen by the writer to be incapable of being directly expressed in connexion with the rest of any clause, he thrusts it in with a proviso. Whenever he perceives a disparity, an anomaly, an inconsistency, or a contradiction, he introduces it with a “provided always.”

—to disguise incoherence.

Examples.

The following are a few instances of the misuse of provisoes. In the 3 Vic. c. 15, s. 28, a general *power* is first conferred on the Tithe Commissioners—next, a *condition* is imposed that before they exercise the power, application must be made to them in writing: involved amongst the terms of this condition is the definition of *the case* to which the entire authority of the Commissioners is limited. Next follows a *proviso*, which prescribes imperatively (*‘shall’*) all *the conditions* to be performed by the Tithe Commissioners before they exercise the powers given by the first words of the enactment; next follow in the terms of a prohibition, (*‘No Assistant Commissioner shall’*) and apparently not included in the proviso, what are only *other conditions* precedent on the exercise of the Commissioners’ authority; then follows in imperative language (*‘shall’*) a direction as to the exercise of the power, to which is joined a confirmation of the powers expressed by way of a dispensation

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from certain other conditions: lastly comes another *proviso*, describing a *condition* on which the exercise of the whole power depends. The original is here set forth in contrast with the mode of statement recommended in its place:—

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1. *The Original.*

The numbers in the margin (9, 8, 10, 2, 1, &c.) show the displacement from the proper order.

- And whereas by the said lastly-recited Act powers are given to the said Commissioners, or any Assistant Commissioners, upon the application in writing of not less than two-thirds in number and value of the landowners in any parishes or townships, to set out and define the boundaries of such parishes or townships in manner in the said Act provided; and it is expedient to extend such power in manner hereinafter mentioned; be it enacted,
9. *Copula* That *it shall be lawful*
8. *The Legal Subject*..... for the said Commissioners, or Assistant Commissioners
10. *The Legal Action* but at the sole discretion of the said Commissioners, and only in such manner as they *shall* see fit and proper, to exercise all and every the powers so given by the said lastly-recited Act relating to boundaries of parishes or townships,
2. *The first Condition*..... on the application in writing of two-thirds in number and value of the landowners of any one parish, place, or township,
1. *The Case*..... whose boundary *shall* be in question,
11. *Fragment of the Legal Action* notwithstanding the landowners in the parish, place, or township adjoining such boundary *shall* not join in such requisition;
4. *The third Condition*..... *Provided always*, that in every such case the said Commissioners, or Assistant Commissioner, *shall*, 21 days at least before proceeding to make inquiry and adjudicate on such question of boundary,

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2. Proposed mode of Statement.

Where there is any question touching the boundary of any 'parish' or 'place,'

if two-thirds in number and value of the landowners, of any such parish or place, apply in writing to the said Tithe Commissioners,

and if the said Commissioners think fit to make inquiry on such question of boundary;

and if the said Commissioners, or any of their Assistant Commissioners,

cause notice to be sent by post, or otherwise given,

21 days at least before proceeding to make such inquiry,

addressed to the churchwardens and overseers,

and also to the surveyors of the highways of every 'parish' or 'place' adjoining such boundary,

of the intention of the said Commissioners or Assistant Commissioners, to proceed on the question of such boundary,

and of the time and place of meeting so to proceed therein;

and if the said Commissioners or Assistant Commissioner, annex to each copy of such notice, a copy of the said application of the landowners;

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The Original.

- cause a notice to be sent by the post, or otherwise given, addressed to the churchwardens and overseers, and also to the surveyors of the highways of every parish, place, or township adjoining such boundary, of the intention of the said Commissioners, or Assistant Commissioner, to proceed on the question of such boundary, and *shall* specify in such notice a time and place of meeting so to proceed therein;
5. The fourth *Condition*..... and *shall* annex to each copy of such notice a copy of the application of the landowners requiring the Commissioners to make such inquiry and adjudication,
6. The fifth *Condition* and *shall* also cause a copy of such notice to be inserted once at least in two successive weeks previous to the day of such meeting in some newspaper having circulation in the county where such parish, place, or township is situated;
14. A second *Legal Action*. and *no* Assistant Commissioner *shall* proceed in any such inquiry
13. The Condition of the second Legal Action. without exhibiting at such meeting the papers containing the advertisements of such notice and also a certificate under the hands of the said Commissioners, or any one or two of them, of one copy of such notice having been respectively sent to such churchwardens and overseers, and a copy to such surveyors, as aforesaid;
15. A third *Legal Action*. and the Assistant Commissioner shall thereupon proceed in all respects,

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Proposed Mode of Statement.

and if the said Commissioners, or Assistant Commissioner, also cause a copy of such notice to be inserted, once at least in two successive weeks previous to the day of meeting, in some newspapers circulating in the county where such 'parish' or 'place' is situated;

and if, during the interval of such 21 days,

no application be made in writing

addressed to the said Commissioners

by two-thirds at least in number and value of the landowners;

in any parish or place adjoining such boundary,

not being parties of the aforesaid application,

objecting to the said Commissioners or Assistant Commissioners

proceeding in the matter of such boundary;

THE SAID TITHE COMMISSIONERS, or any of their Assistant Commissioners,

may

at the sole discretion of the said Commissioners,

and only in such manner as they shall think fit and proper,

exercise all and any of the powers given to them by the Acts relating to boundaries or parishes (121),

notwithstanding that the landowners in the 'parish' or 'place' adjoining such boundary have not joined in such application.

a. And where any Assistant Commissioner intends to proceed in any such inquiry at any meeting,

unless he exhibit at the meeting

the papers containing the advertisement of such notice,

and a certificate under the hands of the said Commissioners, or any one or two of them of one copy of such

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The Original.

16. A fourth *Legal Action*

and his proceeding shall be as valid and binding

as if the said inquiry had been instituted on the application in writing of two-thirds in number and value as well of the landowners of the parish, place, or township to which such notice shall have been so sent as of the parish, place, or township causing such inquiry to be instituted.

7. The sixth *Condition* Provided nevertheless that upon the application in writing, addressed to the said Commissioners during the interval of such 21 days, of not less than two-thirds in number and value of the landowners in any parish, place, or township adjoining such boundary, and not being parties to any such application as aforesaid, objecting to the said Commissioners, or Assistant Commissioner, proceeding under the same in the matter of such boundary, all proceedings which shall have been instituted upon the application of such single parish, place, or township under this Act, shall forthwith be stayed.

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Proposed mode of Statement.

notice having been respectively sent to such churchwardens and overseer, and one copy to such surveyors as aforesaid,

HE *shall not*

proceed in such inquiry.

And thereupon

THE ASSISTANT COMMISSIONER

shall

proceed in all respects,

as if the inquiry had been instituted on the application in writing,

of two-thirds in number and value,

as well of the landowners of such 'parish' or 'place' to which such

notice has been so sent

as of the parish or place causing the inquiry to be instituted;

And HIS PROCEEDING

shall

be as valid and binding as if the inquiry had been so instituted.

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The following is a specimen of the manner in which provisions having some connexion, but only a remote one, with each other, are jumbled into one clause by the formulæ 'Provided always,' and 'Provided also;'

And be it enacted, that the justices present at any such special or adjourned session shall, for the aforesaid purpose, have all the powers for amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as here excepted:

Provided always, that no order of the said justices shall be removed by certiorari or otherwise, into any of His Majesty's Courts of Record at Westminster:

Provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions;

Provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.

6 & 7 Wm. 4, c. 96, s. 7.

An example may be seen in the 57 Geo. III., c. 94, s. 2, of a long enactment relating to the levy of a rate, upon which is grafted, by way of a proviso, a provision in no wise relating to the levy of rates, namely, a condition upon all appellants that they shall give 14 days' notice of appeal against a rate.

It is the belief of the compiler that in the whole body of the statute law digested in the following Appendix, out of many hundreds of provisos not one is to be found legitimately introduced, nor scarcely one to which the doctrines of the courts as to the construction of provisos, could be made by any ingenuity to apply. Perhaps cases may occasionally occur in which the proviso might be found a useful formula; but considering the obscurity of the doctrine on the subject of the construction of provisos, it is even questionable whether a correct use of the proviso would secure a correct interpretation. It would, therefore, probably be better never to admit the formula at all. At all events if it were limited to proper occasions it would not ordinarily make its appearance once in all the Acts of a session.

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The Language of Statutes. Verbs.*

THE attempt to express every action referred to in a statute in a future tense renders the language complicate, anomalous, and difficult to be understood. The practice is founded apparently on a false assumption that the words '*shall*' and '*shall not*' put the enacting verb into future tense. But in all commanding language at least the word '*shall*' is modal, not temporal; it denotes the compulsion, the obligation to act, (*scealan*, to owe, to be obliged.) and does not prophesy that the party will or will not at some future time do the act. 'Thou *shalt* do no murder' is not a prediction, but the '*shalt*' is obligatory in the present tense, continuously through all the time of the operation of the law. When the verb '*may*' is used, the appearance of the future tense unquestionably disappears from the enacting verb; as it does equally in the numerous cases in which such words are used as 'he *is* hereby authorised, empowered, required to' &c. 'the same *is* hereby declared to be null and void,' &c.

Verbs,—
—in compulsory
sentences;

*In modern Acts it has become very much the practice to give arbitrary senses to terms, by means of a declaration in an interpretation clause, that certain words or phrases shall have a more extended or more restricted meaning than they have by common usage. When the words are invariably used in the same Act, in the same extended or restricted sense, there is only one objection to this practice, and that is, that it demands an incessant consciousness in the writer and in the reader, that the words are arbitrarily used, and a constant vigilance lest something proper to be included be lost, or something proper to be excluded be carried, by the arbitrary change in the sense of ordinary terms. The danger is evidently increased where it is intended that the restriction or extension is not to apply universally wherever the word is used in the Act; but only, as is commonly declared, when the context may reasonably admit of the arbitrary construction. This, though it may make the process of legislating easy by dispensing with distinctions in the statute, leads to many surprises, particularly in the case of amendments introduced by persons who have not considered the effect of the construction clause; and it evidently amounts generally only to this, that people must get a decision by means of litigation as to the meaning of the Act, which it is troublesome to the draftsman to determine expressly and beforehand. But far the worst operation is that which all persons conversant with the progress of bills in Parliament must be very conscious of, namely, the opportunity which these interpretation clauses afford for concealing important and extensive effects under what appears to be an innocent definition of some unsuspected word; nothing being more common, when a provision is wanted which cannot be openly proposed, than the enquiry whether it cannot be disguised in a construction clause. The courts of law are aware how little light a construction clause throws on the real deliberate intention of Parliament, and therefore pay very small respect to them; but this does not diminish the difficulty of those who have to obey the law, who between the ordinary meaning of the words, the arbitrary enlargement or contraction of that meaning, and the ignorance of the extent to which the courts of law would apply that enlargement or contraction in all the parts of the statute where the word occurs, are wholly confused by these definitions, instead of being, as is the proper effect of a definition, made by their aid more certain of the meaning.

Definitions should challenge attention by being placed before, not as is the more common practice, after, the matter to which they have reference.

The words defined ought always to be distinguished, whenever used in the Bill, by some mark, as for instance, by quotation marks. This is done in the following appendices.

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—in sentences
descriptive of *the*
case;

But because the enactment, the *legal action*, is supposed to be sometimes (that is, where ‘*shall*’ is used) in the future tense, the further attempt is made, for consistency sake, to express the circumstances which are required to precede the operation of the enactment, that is, the *case* or the *condition*, either in the future or perfect future. We thus have unceasing repetitions of such phrases as,

- if any person *shall* give notice, he may appeal, &c.;
- if the said commissioners *shall*, by any order, &c.;
- all elections *shall* hereafter, so far as the said commissioners *shall* direct, &c.;
- in case any person *shall* wilfully neglect or disobey, &c.;
- when such notice *shall have been* published, &c.;
- if any balance *shall have been* found to be due, &c.;

Here are two specimens in quite a different style from two adjacent clauses:

Provided always, and the said commissioners *are* hereby authorized, if they *shall* so think fit, &c.,
4 & 5 Wm. 4, c. 76, s. 28.

Provided always, and the said commissioners are hereby authorized if *they see* fit, &c., *ib.* s. 29.

an error as to
retroactive
construction.

It is supposed sometimes that it is necessary to describe *the case* and *the conditions* in the future or perfect future, for fear that if it were expressed in the present tense, as, ‘when any person *is* aggrieved,’ the law would operate only upon cases existing at the moment of the passing of the Act; or that if it were expressed, ‘when any person *has been* convicted,’ &c., the law would be retrospective, and apply only to convictions previous to the passing of the Act. But this apprehension is entirely founded on a mistake. The rule of interpretation is never to give a retrospective effect to a statute, except when a retrospective intention is manifested by clear words; accordingly there are multitudes of instances existing, in the statutes, of cases, including many descriptions of offences, where the construction of the statute would be most strict, in which the verbs are in the present or past tense. Some of these will be presently cited.

—a rule proposed
for the use of verbs
in *cases* and
conditions.

If the law be regarded while it remains in force as *constantly speaking*, we get a clear and simple rule of expression, which will, whenever a case occurs for its application, accurately correspond with the then state of facts. The law will express in the present tense facts and conditions required to be

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concurrent with the operation of *the legal action* ; in the perfect past tense, facts and conditions required as precedents to *the legal action* ; thus,

—present tense, the facts required to be concurrent with the *legal action*,—

The law.— Where by reason of the largeness of parishes the inhabitants *cannot* reap the benefits of this Act,
TWO OR MORE OVERSEERS *shall* be chosen, &c.

—the facts.— Whereas, by reason of the largeness of the parish of All Saints, the inhabitants thereof *cannot* reap the benefit of the Act, &c., now therefore, &c.

The law.— Where the justices of the peace of a county *are excluded* from holding jurisdiction in any liberty, franchise, &c.,
ALL THEIR POWERS, &c., *shall*, &c.

—the facts.— Whereas the justices of the peace of the county of Herts *are excluded* from holding jurisdiction in the liberty of St. Albans, now, therefore, &c.,

—perfect tense, the facts required to have preceded the legal action,—

The law.— When the justices of the peace of any 'county assembled at quarter sessions' *have agreed* that the ordinary officers appointed for the preservation of the peace *are* not sufficient for the preservation of the peace, the protection of the inhabitants, and the security of property within the county,
and when they *have set forth* the same, and *have declared* how many constables *are* in their opinion needed for the aforesaid purposes, and what rates of payment it would be expedient to pay to the chief and other constables,

APPENDIX I

and when such report *has been sent* to one of Her Majesty's Principal Secretaries of State,

and when one of Her Majesty's Principal Secretaries of State *has made and finally settled* any rules for the government, pay, clothing, accoutrements, and necessities of such constables;

and when such rules as finally settled (?) *have been received* from the Secretary of State by the clerk of the peace of such county;

THE SAID JUSTICES *may* appoint a chief constable, &c.

—the facts.— Whereas the justices of the peace of the county of Herts assembled at quarter sessions *have agreed* that the ordinary officers appointed for the preservation of the peace, the protection of the inhabitants, and the security of property within the said county.

and whereas they *have set forth* the same, and *have declared* that 200 constables *are* in their opinion needed for the aforesaid purposes, and that the rate of payment which it would be expedient to pay to the chief constable is £ by the year, and to the other constables, is s.. by the week,

and whereas such report *has been sent* to one of Her Majesty's Principal Secretaries of State,

and whereas one of Her Majesty's Principal Secretaries of State *has made and finally settled* certain rules for the government, pay, clothing,

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accoutrements, and necessities of such constables;
and whereas such rules as so finally settled *have been received* from the Secretary of State by the clerk of the peace of the said county,
now we, THE SAID JUSTICES do hereby, &c.

This mode of expression, assuming the law to be always speaking,—*reciting facts concurrent with its operation, as if they were present facts, and facts precedent to its operation, as if they were past facts*,—has two very considerable advantages:

—First, it avoids the necessity of very complicated grammatical construction in the statement of cases and conditions, often involving the use of futures, perfect futures, and past conditionals—

if a person *shall* be convicted of, &c.; and if he *shall have been* before convicted of the same offence; and if he *shall not have* undergone the punishment which he *should have undergone* for the offence of which he *shall have been so before convicted*.

—Secondly, keeping the description of *cases and conditions* in the present and in the perfect tenses, it leaves the imperative and potential language of *the legal action* clearly distinguished, by the broadest and most intelligible forms of expression. Narration will appear in narrative language, instead of being allowed, as now, to usurp imperious language, and thus to confound *the facts* and *the law*.

There are many partial examples to be found in statutes of the practice now recommended for adoption universally; but they are not deliberately used, and are often mingled in the same sentence with the contrary practice. Thus—

‘If the Court shall order the sum at which any person *is* rated, to be raised.’—41 *Geo.* 3, c. 23, s. 17.

APPENDIX I

‘If any one duly rated to a Church Rate, the validity of which *has not been* questioned.’

‘Any justice of the peace of the county, &c., where the church *is* situate.’—53 *Geo.* 3, c. 127, s. 7.

‘Any justice, &c., other than such justice as *is* patron of the church.’—1 *Geo.* 1, *stat.* 2, c. 6, s. 2.

A penal example.

‘If it shall appear that the husband or father, &c., *is* an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money *he earns* in alehouses or places of bad repute, *does not* maintain his wife or children, and *suffers* them to be reduced to want, it shall be lawful,’ &c.—22 *Geo.* 3, c. 83, s. 35.

—rules as to language of cases, conditions, and of *legal subjects* and *actions* recapitulated.

THE LANGUAGE appropriate in other respects to *the case*—that it should be hypothetical; to *the condition*—that it should be conditional; to *the legal subject*—that it should be simply nominative; to *the copula*, and to *the legal action*—that it should be facultative or imperative, has been adverted to before, in treating severally of these elements of a legislative sentence.

IN CONFORMING to these rules, it is to be observed that, after all, nothing is more required than that instead of an accidental and incongruous style, the common popular structure of plain English should be resorted to.

There is apparently a notion amongst amateurs, that legislative language must be intricate and barbarous. Certain antick phrases are apparently thought by them to be essential to law writing. A readiness in the use of ‘nevertheless,’ ‘provided always,’ ‘it shall and may be lawful, and he is hereby authorized, empowered and required to,’ ‘anything in any Act or Acts to the contrary notwithstanding,’ &c. &c., seem to be admitted to constitute the qualification for drawing Acts of Parliament. The merit appears to mount higher in proportion

as the author can succeed in including a greater number of limitations, qualifications, conditions, and provisoes, between the nominative case and its verb, or any other pair of dependent words. It is, however, a clear mistake to think that this absurd style, prevalent as it is, and much as we sacrifice to adhere to it, has the sanction of authority. The bills prepared by judges and well-informed lawyers, or by men really practised in the forms of legal expression, have at all times been, as a rule, remarkable for simplicity and directness, and allowing occasionally something to the technical nature of the subjects, for the popularity of their style and construction.

If it could be made to be generally recognised that the essentials of every law are simple, and that their direct expression is the perfection of law writing, the greatest defects of our statute law would cease.

IT WILL PERHAPS, SEEM to be a great waste of care to make all these distinctions, as to the elements, the method of distribution, and the expression of *a single legislative sentence*. It may seem as if the whole structure of a complicate statute should be more readily explained than the structure of a single sentence seems to be explained in the foregoing observations.

Review.

But it is of these simple elements that the whole law consists. If these be not well discriminated and well marshalled in each sentence, there is no hope for their being well combined in the whole law. On the other hand, if each single sentence be well constructed, though the large divisions of the whole statute be ill-combined, the parts will still be clear—the law will still be certain when it is found, although by bad arrangement made less capable of being readily discovered; and the worst effect that could result would be that the law would then consist of an ill-connected mass of well-expressed provisions, instead of being, as the statute law now is for the most part, an ill-connected mass of ill-expressed provisions.

It is scarcely possible that the single sentence can be systematically framed, on good principles, without an equal improvement taking place in general arrangement, at the first stage, of each individual statute; and at the next stage, of the more general heads of the law, and thus the objects referred to at page 184, of facilitating special legislation, and at the same time securing consistency in principles, and generality in expression, is made more attainable; for how can *the case* be always placed foremost without its being apparent how often,

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for the same case, different provisions are made,—how often verbal, formal, and accidental variations are made in the description of cases in essentials the same; and how can any one resist the immediate conclusion that the expression of all such cases should be made identical, and the various enactments for the same case combined together? Or, where *conditions* are found in a constant place and order, can they be as capriciously introduced, varied, or abandoned, as now? and where analogous conditions are imposed in various cases, will not the principle of these conditions force itself on attention, and compel their extension to all other cases coming within the same principle? Where *the subject* is always kept conspicuous, is it probable that the same persons can be constantly brought into view, without suggesting the identity of their conditions and relations, and the propriety therefore of the generalisation of the law applicable to them, or without compelling the extension to all such persons of the rights only withheld from some by accident, and of the obligations only escaped by others by like accident? Again, can the *legal action* be placed uniformly and conspicuously before the legislature or the public without attention being called to every new experiment in legislation, to every anomaly in legal action, or without causing more consistency to be observed in the creation and expression of rights, obligations, powers, sanctions, and vindications; or without producing, by the concentration of attention upon the functional part of legislation, a better appreciation of the legislator's peculiar business, and a more systematic performance of it?

If these questions, or any of them, are to be answered in the affirmative, the foregoing discussion of the elements and form of a legislative sentence, long as it is, will be in some measure justified.

GEORGE COODE.

*Inner Temple,
July 25, 1842.*

APPENDIX II

AN ACT RESPECTING THE INTERPRETATION OF STATUTES

R.S.C. 1970, c. I-23, as amended by R.S.C. 1970, 2nd Supplement, cc. 10, 29; 1972, c. 17.

SHORT TITLE

1. This Act may be cited as the *Interpretation Act*. Short title
1967-68, c.7, s.1.

INTERPRETATION

2. (1) In this Act Definitions
“Act” means an Act of the Parliament of Canada; “Act”
“enact” includes to issue, make or establish; “enact”
“enactment” means an Act or regulation or any portion of an Act or regulation; “enactment”
“public officer” includes any person in the public service of Canada “public officer”
(a) who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or
(b) upon whom a duty is imposed by or under an enactment;
“regulation” includes an order, regulation, order in council, order prescribing regulations, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established “regulation”
(a) in the execution of a power conferred by or under the authority of an Act, or
(b) by or under the authority of the Governor in Council;
“repeal” includes revoke or cancel. “repeal”
(2) For the purposes of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect shall be deemed to have been repealed. 1967-68, c.7, s.2. Expired enactment

APPLICATION

3. (1) Every provision of this Act extends and applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act. Application
(2) The provisions of this Act apply to the interpretation of this Act. Application to this Act
(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable thereto and not inconsistent with this Act. 1967-68, c. 7, s. 3. Rules of construction not excluded

APPENDIX II

ENACTING CLAUSE OF ACTS

- | | |
|------------------|--|
| Enacting clause | 4. (1) The enacting clause of an Act may be in the following form: "Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:". |
| Order of clauses | (2) The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form. 1967-68, c. 7, s. 4. |

OPERATION

Royal Assent

- | | |
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| Royal assent and date of commencement | 5. (1) The Clerk of the Parliaments shall endorse on every Act, immediately after the title thereof, the day, month and year when the Act was assented to in Her Majesty's name; such endorsement shall be taken to be a part of the Act, and the date of such assent shall be the date of the commencement of the Act, if no other date of commencement is therein provided. |
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| Commencement provision | (2) Where an Act contains a provision that the Act or any portion thereof is to come into force on a day later than the date of assent to the Act, such provision shall be deemed to have come into force on the date of assent to the Act. |
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| Commencement when no date fixed | (3) Where an Act provides that certain provisions thereof are to come or shall be deemed to have come into force on a day other than the date of assent to the Act, the remaining provisions of the Act shall be deemed to have come into force on the date of assent to the Act. 1967-68, c. 7, s. 5. |
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Day Fixed for Commencement or Repeal

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| Operation when date fixed for commencement or repeal | 6. (1) Where an enactment is expressed to come into force on a particular day, it shall be construed as coming into force upon the expiration of the previous day; and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect upon the commencement of the following day. |
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| When no date fixed | (2) Every enactment that is not expressed to come into force on a particular day shall be construed as coming into force |
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(a) in the case of an Act, upon the expiration of the day immediately before the day the Act was enacted;

(b) in the case of a regulation of a class that is not exempted from the application of subsection 5(1) of the *Statutory Instruments Act*, upon the expiration of the day immediately before the day the regulation was registered pursuant to section 6 of that Act; and

(c) in the case of a regulation of a class that is exempted from the application of subsection 5(1) of the *Statutory Instruments Act*, upon the expiration of the day immediately before the day the regulation was made. R.S., c. I-23, s.6; c.29(2nd Supp.), s.1.

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Regulation Prior to Commencement

7. Where an enactment is not in force and it contains provisions conferring power to make regulations or do any other thing, that power may, for the purpose of making the enactment effective upon its commencement, be exercised at any time before its commencement, but a regulation so made or a thing so done has no effect until the commencement of the enactment except in so far as may be necessary to make the enactment effective upon its commencement. 1967-68, c.7, s.7. Preliminary proceedings

Territorial Operation

8. (1) Every enactment applies to the whole of Canada, unless it is otherwise expressed therein. Territorial operation

(2) Where an enactment that does not apply to the whole of Canada is amended, no provision in the amending enactment applies to any part of Canada to which the amended enactment does not apply, unless it is therein provided that the amending enactment applies to such part of Canada or to the whole of Canada. Amending enactment

(3) Every Act of the Parliament of Canada now in force enacted prior to the 11th day of December 1931 that in terms or by necessary or reasonable implication was intended, as to the whole or any part thereof, to have extra-territorial operation, shall be construed as if at the date of its enactment the Parliament of Canada then had full power to make laws having extra-territorial operation as provided by the *Statute of Westminster, 1931*, R.S., c. 107, s. 2; 1967-68, c. 7, s. 8. Extra-territorial operation

RULES OF CONSTRUCTION

Private Acts

9. No provision in a private Act affects the rights of any person, except only as therein mentioned or referred to. 1967-68, c.7, s.9. Provisions in private Acts

Law Always Speaking

10. The law shall be considered as always speaking, and whenever a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment and every part thereof according to its true spirit, intent and meaning. 1967-68, c.7, s.10. Law always speaking

Enactments Remedial

11. Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1967-68, c.7, s.11. Enactments deemed remedial

Preambles and Marginal Notes

12. The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purport and object. 1967-68, c.7, s.12. Preamble

13. Marginal notes and references to former enactments in an enactment after the end of a section or other division thereof form no part of the enactment, but shall be deemed to have been inserted for convenience of reference only. 1967-68, c.7, s.13. Marginal notes

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Application of Definitions

Application of
interpretation
provisions

14. (1) Definitions or rules of interpretation contained in an enactment apply to the construction of the provisions of the enactment that contain those definitions or rules of interpretation, as well as to the other provisions of the enactment.

Interpretation
sections subject
to exceptions

(2) Where an enactment contains an interpretation section or provision, it shall be read and construed

(a) as being applicable only if the contrary intention does not appear, and

(b) as being applicable to all other enactments relating to the same subject-matter unless the contrary intention appears. 1967-68, c. 7, s. 14.

Words in
regulations

15. Where an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power. 1967-68, c.7, s.15.

Her Majesty

Her Majesty not
bound or affected
unless stated

16. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except only as therein mentioned or referred to. 1967-68, c.7, s.16.

Proclamations

Proclamation

17. (1) Where an enactment authorizes the issue of a proclamation, the proclamation shall be understood to be a proclamation of the Governor in Council.

Proclamation to
be issued on
advice

(2) Where the Governor General is authorized to issue a proclamation, the proclamation shall be understood to be a proclamation issued under an order of the Governor in Council, but it is not necessary to mention in the proclamation that it is issued under such order.

Date of
proclamation

(3) Where the Governor in Council has authorized the issue of a proclamation, the proclamation may purport to have been issued on the day its issue was so authorized, and the day on which it so purports to have been issued shall be deemed to be the day on which the proclamation takes effect.

Judicial notice of
proclamation

(4) Where an enactment is expressed to come into force on a day to be fixed by proclamation, judicial notice shall be taken of the issue of the proclamation and the day fixed thereby without being specially pleaded. 1967-68, c. 7, s. 17.

Oaths

Administration
of oaths

18. (1) Where by an enactment or by a rule of the Senate or House of Commons, evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken or administered, the oath may be administered, and a certificate of its having been made, taken or administered may be given by any one authorized by the enactment or rule to take the evidence, or by a judge of any court, a notary public, a justice of the peace, or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered.

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(2) Where power is conferred upon a justice of the peace to administer an oath or affirmation, or to take an affidavit or declaration, the power may be exercised by a notary public or a commissioner for taking oaths. 1967-68, c. 7, s. 18.

Where justice of
peace empowered

Reports to Parliament

19. Where an Act requires a report or other document to be laid before Parliament and, in compliance with the Act, a particular report or document has been laid before Parliament at a session thereof, nothing in the Act shall be construed as requiring the same report or document to be laid before Parliament at any subsequent session thereof. 1967-68, c.7, s.19.

Reports to
Parliament

Corporations

20. (1) Words establishing a corporation shall be construed

Powers vested in
corporations

(a) to vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is established and to alienate the same at pleasure;

(b) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, to vest in the corporation power to use either the English or the French form of its name or both forms and to show on its seal both the English and French forms of its name or have two seals, one showing the English and the other showing the French form of its name;

(c) to vest in a majority of the members of the corporation the power to bind the others by their acts; and

(d) to exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment establishing the corporation.

(2) Where an enactment establishing a corporation and in each of the English and French versions of the enactment the name of the corporation is in the form only of the language of that version, the name of the corporation shall consist of the form of its name in each of the versions of the enactment.

Corporate name

(3) No corporation shall be deemed to be authorized to carry on the business of banking unless such power is expressly conferred upon it by the enactment establishing the corporation. 1967-68, c. 7, s. 20.

Banking business

Majority and Quorum

21. (1) Where an act or thing is required or authorized to be done by more than two persons, a majority of them may do it.

Majorities

(2) Where an enactment establishes a board, court, commission or other body consisting of three or more members (in this section called an "association"),

Quorum of
board, court,
commission, etc.

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(a) at a meeting of the association, a number of members of the association equal to

(i) at least one-half of the number of members provided for by the enactment, if that number is a fixed number, and

(ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range,

constitutes a quorum;

(b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, shall be deemed to have been done by the association; and

(c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum. 1967-68, c. 7, s. 21.

Appointment, Retirement and Powers of Officers

Public officers
hold office during
pleasure

22. (1) Every public officer appointed before, on or after the 1st day of September 1967, by or under the authority of an enactment or otherwise, shall be deemed to have been appointed to hold office during pleasure only, unless it is otherwise expressed in the enactment or in his commission or appointment.

Effective day of
appointments

(2) Where an appointment is made by instrument under the Great Seal, the instrument may purport to have been issued on or after the day its issue was authorized, and the day on which it so purports to have been issued shall be deemed to be the day on which the appointment takes effect.

Appointment or
engagement
otherwise than
under Great Seal

(3) Where in any enactment there is authority to appoint a person to a position or to engage the services of a person, otherwise than by instrument under the Great Seal, the instrument of appointment or engagement may be expressed to be effective on or after the day on which such person commenced the performance of the duties of the position or commenced the performance of the services, and the day on which it is so expressed to be effective, unless that day is more than sixty days before the day on which the instrument is issued, shall be deemed to be the day on which the appointment or engagement takes effect.

Remuneration

(4) Where a person is appointed to an office, the appointing authority may fix, vary or terminate his remuneration.

Commencement
of appointments
or retirements

(5) Where a person is appointed to an office effective on a specified day, or where the appointment of a person is terminated effective on a specified day, the appointment or termination, as the case may be, shall be deemed to have been effected immediately upon the expiration of the previous day. 1967-68, c. 7, s. 22.

Implied powers
respecting public
officers

23. (1) Words authorizing the appointment of a public officer to hold office during pleasure include the power of

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(a) terminating his appointment or removing or suspending him,
(b) re-appointing or reinstating him, and
(c) appointing another in his stead or to act in his stead,
in the discretion of the authority in whom the power of appointment is vested.

(2) Words directing or empowering a Minister of the Crown to do an act or thing, or otherwise applying to him by his name of office, include a Minister acting for him, or, if the office is vacant, a Minister designated to act in the office by or under the authority of an order in council, and also his successors in the office, and his or their deputy, but nothing in this subsection shall be construed to authorize a deputy to exercise any authority conferred upon a Minister to make a regulation as defined in the *Statutory Instruments Act*. Powers of acting Minister, successor or deputy

(3) Words directing or empowering any other public officer to do any act or thing, or otherwise applying to him by his name of office, include his successors in the office and his or their deputy. Successors to and deputy of public officer

(4) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office. R.S., c.I-23, s.23; c.29 (2nd Supp.), s.1. Powers of holder of public office

Evidence

24. (1) Where an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in any judicial proceedings, the document is admissible in evidence and the fact shall be deemed to be established in the absence of any evidence to the contrary. Documentary evidence

(2) Every copy of an enactment having printed thereon what purports to be the name or title of the Queen's Printer and Controller of Stationery or the Queen's Printer shall be deemed to be a copy purporting to be printed by the Queen's Printer for Canada. 1967-68, c. 7, s. 24; 1968-69, c. 28, s. 105. Queen's Printer

Computation of Time

25. (1) Where the time limited for the doing of a thing expires or falls upon a holiday, the thing may be done on the day next following that is not a holiday. Time limits and holidays

(2) Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen. Clear days

(3) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens. Not clear days

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Beginning and ending of prescribed periods	(4) Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.
After specified day	(5) Where a time is expressed to begin after or to be from a specified day, the time does not include that day.
Within a time	(6) Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.
Calculation of a period of months after or before a specified day	(7) Where there is a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including (a) the day immediately after or before the specified day, according as the period follows or precedes the specified day; and (b) the day in the last month so counted having the same calendar number as the specified day, but if such last month has no day with the same calendar number, then the last day of that month.
Time of the day	(8) Where there is a reference to time expressed as a specified time of the day, the time shall be taken to mean standard time.
Time when specified age attained	(9) A person shall be deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of his birth. 1967-68, c. 7, s. 25.
<i>Miscellaneous Rules</i>	
Reference to magistrate, etc.	26. (1) Where anything is required or authorized to be done by or before a judge, magistrate, justice of the peace, or any functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done.
Ancillary powers	(2) Where power is given to a person, officer or functionary, to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing.
Powers to be exercised as required	(3) Where a power is conferred or a duty imposed the power may be exercised and the duty shall be performed from time to time as occasion requires.
Power to repeal	(4) Where a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to repeal, amend or vary the regulations and make others.
Forms	(5) Where a form is prescribed, deviations therefrom, not affecting the substance or calculated to mislead, do not invalidate the form used.
Gender	(6) Words importing male persons include female persons and corporations.
Number	(7) Words in the singular include the plural, and words in the plural include the singular.

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(8) Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings. 1967-68, c. 7, s. 26.

Parts of speech and grammatical forms

Offences

27. (1) Where an enactment creates an offence.
- (a) the offence shall be deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;
- (b) the offence shall be deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offence is an indictable offence; and
- (c) if the offence is one for which the offender may be prosecuted by indictment or for which he is punishable on summary conviction, no person shall be considered to have been convicted of an indictable offence by reason only of having been convicted of the offence on summary conviction.
- (2) All the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of the *Criminal Code* relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.
- (3) In a commission, proclamation, warrant or other document relating to criminal law or procedure in criminal matters
- (a) a reference to an offence for which the offender may be prosecuted by indictment shall be construed as a reference to an indictable offence; and
- (b) a reference to any other offence shall be construed as a reference to an offence for which the offender is punishable on summary conviction. 1967-68, c. 7, s. 27.
- Indictable and summary conviction offences
- Criminal Code to apply
- Documents similarly construed

DEFINITIONS

28. In every enactment
- “Act”, as meaning an Act of a legislature, includes an ordinance of the Yukon Territory or of the Northwest Territories;
- “bank” or “chartered bank” means a bank to which the *Bank Act* applies;
- “broadcasting” means any radiocommunication in which the transmissions are intended for direct reception by the general public;
- “commencement”, when used with reference to an enactment, means the time at which the enactment comes into force;
- “Commonwealth”, “British Commonwealth”, “Commonwealth of Nations” or “British Commonwealth of Nations” means the association of countries named in the schedule, which schedule may be amended from time to time by proclamation of the Governor in Council
- (a) by adding thereto the name of any country recognized by such proclamation to be a member of the Commonwealth, or
- Definitions
- “Act”
- “bank”
- “broadcasting”
- “commencement”
- “Commonwealth”

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(b) by deleting therefrom the name of any country recognized by such proclamation to be no longer a member of the Commonwealth;

and "Commonwealth country" means a country that is a member of the association of such countries;

"Commonwealth and Dependent Territories"	"Commonwealth and Dependent Territories" means the several Commonwealth countries and their colonies, possessions, dependencies, protectorates, protected states, condominiums and trust territories;
"county"	"county" includes two or more counties united for purposes to which the enactment relates;
"county court"	"county court" in its application to the Province of Ontario includes, and in its application to the Provinces of Saskatchewan, Alberta and Newfoundland means, "district court";
"diplomatic or consular officer"	"diplomatic or consular officer" includes an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attache, consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul, acting consular agent, high commissioner, permanent delegate, adviser, acting high commissioner, and acting permanent delegate;
"Federal Court"	"Federal Court" means the Federal Court of Canada;
"Federal Court — Appeal Division"	"Federal Court — Appeal Division" or "Federal Court of Appeal" means that division of the Federal Court of Canada called the Federal Court — Appeal Division or referred to as the Federal Court of Appeal by the <i>Federal Court Act</i> ;
"Federal Court — Trial Division"	"Federal Court — Trial Division" means that division of the Federal Court of Canada so named by the <i>Federal Court Act</i> ;
"fiscal year"	"fiscal year" or "financial year" means, in relation to money provided by Parliament, or the Consolidated Revenue Fund, or the accounts, taxes or finances of Canada, the period beginning on and including the 1st day of April in one year and ending on and including the 31st day of March in the next year;
"Governor"	"Governor", "Governor of Canada", or "Governor General" means the Governor General for the time being of Canada, or other chief executive officer or administrator for the time being carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;
"Governor in Council"	"Governor in Council" or "Governor General in Council" means the Governor General of Canada, or person administering the Government of Canada for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada;
"Great Seal"	"Great Seal" means the Great Seal of Canada;
"Her Majesty"	"Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;

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“Her Majesty’s Realms and Territories” means all realms and territories under the sovereignty of Her Majesty;	“Her Majesty’s Realms and Territories”
“herein” used in any section shall be understood to relate to the whole enactment, and not to that section only;	“herein”
“holiday” means any of the following days, namely, Sunday; New Year’s Day; Good Friday; Easter Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign; Victoria Day; Dominion Day; the first Monday in September, designated Labour Day; Remembrance Day; and day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving; and any of the following additional days, namely: (a) in any province, any day appointed by proclamation of the lieutenant governor of the province to be observed as a public holiday or as a day of general prayer or mourning or day of public rejoicing or thanksgiving within the province, and any day that is a non-juridical day by virtue of an Act of the legislature of the province, and (b) in any city, town, municipality or other organized district, any day appointed as a civic holiday by resolution of the council or other authority charged with the administration of the civic or municipal affairs of the city, town, municipality or district;	“holiday”
“legislature”, “legislative council” or “legislative assembly” includes the Lieutenant Governor in Council and the Legislative Assembly of the Northwest Territories, as constituted before the 1st day of September 1905, the Commissioner in Council of the Yukon Territory, and the Commissioner in Council of the Northwest Territories;	“legislature”
“lieutenant governor” means the lieutenant governor for the time being, or other chief executive officer or administrator for the time being, carrying on the government of the province indicated by the enactment, by whatever title he is designated, and, in relation to the Yukon Territory or the Northwest Territories, means the Commissioner thereof;	“lieutenant governor”
“lieutenant governor in council” means the lieutenant governor, or person administering the government of the province indicated by the enactment, for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the executive council of such province and, in relation to the Yukon Territory or the Northwest Territories, means the Commissioner thereof;	“lieutenant governor in council”
“local time”, in relation to any place, means the time observed in that place for the regulation of business hours;	“local time”
“may” is to be construed as permissive;	“may”
“military” shall be construed as relating to all or any part of the Canadian Forces;	“military”

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	"month" means a calendar month;
"month"	"now" or "next" shall be construed as having reference to the time
"now"	when the enactment was enacted;
	"oath" includes a solemn affirmation or declaration, whenever the
"oath"	context applies to any person by whom and case in which a solemn affirmation or declaration may be made instead of an oath; and in like cases the expression "sworn" includes the expression "affirmed" or "declared";
	"person" or any word or expression descriptive of a person, includes
"person"	a corporation;
	"proclamation" means a proclamation under the Great Seal;
"proclamation"	"province" means a province of Canada, and includes the Yukon
"province"	Territory and the Northwest Territories;
	"radio" or "radiocommunication" means any transmission, emission
"radio" or "radiocommu- nication"	or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electro-magnetic waves of frequencies lower than three thousand Gigacycles per second propagated in space without artificial guide;
"regular force"	"regular force" means the component of the Canadian Forces that is referred to in the <i>National Defence Act</i> as the regular force;
"reserve force"	"reserve force" means the component of the Canadian Forces that is referred to in the <i>National Defence Act</i> as the reserve force;
"shall"	"shall" is to be construed as imperative;
"standard time"	"standard time", except as otherwise provided by any proclamation of the Governor in Council which may be issued for the purposes of this definition in relation to any province or territory or any part thereof, means <p>(a) in relation to the Province of Newfoundland, Newfoundland standard time, being three hours and thirty minutes behind Greenwich time,</p> <p>(b) in relation to the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, those parts of the Province of Quebec lying east of the sixty-third meridian of west longitude, and those parts of the Northwest Territories lying east of the sixty-eighth meridian of west longitude, Atlantic standard time, being four hours behind Greenwich time,</p> <p>(c) in relation to those parts of the Province of Quebec lying west of the sixty-third meridian of west longitude, and those parts of the Province of Ontario lying between the ninetieth and the sixty-eighth meridians of west longitude, Southampton Island and the islands adjacent to Southampton Island, and that part of the Northwest Territories lying between the sixty-eighth and the eighty-fifth meridians of west longitude, eastern standard time, being five hours behind Greenwich time.</p> <p>(d) in relation to that part of the Province of Ontario lying west of the ninetieth meridian of west longitude, the Province of Manitoba, and that part of the Northwest Territories, except South-</p>

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ampton Island and the islands adjacent to Southampton Island, lying between the eighty-fifth and the one hundred and second meridians of west longitude, central standard time, being six hours behind Greenwich time,

(e) in relation to the Province of Saskatchewan, the Province of Alberta, and that part of the Northwest Territories lying west of the one hundred and second meridian of west longitude, mountain standard time, being seven hours behind Greenwich time,

(f) in relation to the Province of British Columbia, Pacific standard time, being eight hours behind Greenwich time, and

(g) in relation to the Yukon Territory, Yukon standard time, being nine hours behind Greenwich time;

“statutory declaration” means a solemn declaration made by virtue of the *Canada Evidence Act*;

“statutory declaration”

“superior court” means

“superior court”

(a) in the Province of Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Alberta or Newfoundland, the Supreme Court of the Province,

(b) in the Province of Quebec, the Court of Queen’s Bench, and the Superior Court in and for the Province,

(c) in the Province of British Columbia, the Court of Appeal and the Supreme Court of the Province,

(d) in the Province of Manitoba or Saskatchewan, the Court of Appeal for the Province and the Court of Queen’s Bench for the Province,

(e) in the Yukon Territory or the Northwest Territories, the Supreme Court thereof, and includes the Supreme Court of Canada and the Federal Court of Canada;

“sureties” means sufficient sureties, and the expression “security” means sufficient security; and, whenever these words are used, one person is sufficient therefor, unless otherwise expressly required;

“sureties”

“telecommunication” means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual or other electromagnetic system;

“telecommunication

“two justices” means two or more justices of the peace, assembled or acting together;

“two justices”

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

“United Kingdom”

“United States” means the United States of America;

“United States”

“writing”, or any term of like import, includes words printed, type-written, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in visible form;

“writing”

“year” means any period of twelve consecutive months, except that a reference to a “calendar year” means a period of twelve consecutive months commencing on the first day of January and a refer-

“year”

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ence by number to a Dominical year means the period of twelve consecutive months commencing on the first day of January of that year. R.S., c.I-23, s.28; c.10(2nd Supp.), s.65;

Affirmative and negative resolutions **28.1 (1) In every Act**

(a) the expression “subject to affirmative resolution of Parliament”, when used in relation to any regulation, means that such regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and shall not come into force unless and until it is affirmed by a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses;

(b) the expression “subject to affirmative resolution of the House of Commons”, when used in relation to any regulation, means that such regulation shall be laid before the House of Commons within fifteen days after it is made or, if the House is not then sitting, on any of the first fifteen days next thereafter that the House is sitting and shall not come into force unless and until it is affirmed by a resolution of the House of Commons introduced and passed in accordance with the rules of that House;

(c) the expression “subject to negative resolution of Parliament”, when used in relation to any regulation, means that such regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and may be annulled by a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses; and

(d) the expression “subject to negative resolution of the House of Commons”, when used in relation to any regulation, means that such regulation shall be laid before the House of Commons within fifteen days after it is made or, if the House is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting and may be annulled by a resolution of the House of Commons introduced and passed in accordance with the rules of that House.

Effect of negative resolution

(2) Where a regulation is annulled by a resolution of Parliament or of the House of Commons, as the case may be, it shall be deemed to have been revoked on the day the resolution is passed and any law that was revoked or amended by the making of that regulation shall be deemed to be revived on the day the resolution is passed but the validity of any action taken or not taken in compliance with a regulation so deemed to have been revoked shall not be affected by the resolution. c.10(2nd Supp.), s.65

“Telegraph”

29. The expression “telegraph” and its derivatives in an enactment or in an Act of the legislature of any province enacted before that province became part of Canada on any subject that is within the

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legislative powers of the Parliament of Canada, shall be deemed not to include the word “telephone” or its derivatives. 1967-68, c.7, s.30.

30. The name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing, means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation thereof. 1967-68, c.7, s.31.

Common names

31. Where in an enactment relating to the affairs of Parliament or the Government of Canada there is a reference to a period of a year without anything in the context to indicate beyond doubt whether a fiscal year, or any period of twelve consecutive months or a period of twelve consecutive months commencing on the first day of January is intended, the Governor in Council may prescribe which of such periods of twelve consecutive months shall constitute a year for the purposes of the enactment. 1967-68, c.7, s.32.

Power to define year

REFERENCES AND CITATIONS

32. (1) In an enactment or document

(a) an Act may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number in the volume of Acts for the year or regnal year in which it was enacted, or by reference to its long title or short title, with or without reference to its chapter number; and

(b) a regulation may be cited by reference to its long title or short title, by reference to the Act under which it was made or by reference to the number or designation under which it was registered by the Clerk of the Privy Council.

(2) A citation of or reference to an enactment shall be deemed to be a citation of or reference to the enactment as amended. 1967-68, c. 7, s. 33.

Citation of enactment

Citation includes amendment

33. (1) A reference in an enactment by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules, appendices or forms shall be read as including the number or letter first mentioned and the number or letter last mentioned.

Reference to two or more parts, etc.

(2) A reference in an enactment to a part, division, section, schedule, appendix or form shall be read as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

Reference in enactment to parts, etc.

(3) A reference in an enactment to a subsection, paragraph, subparagraph, clause or subclause shall be read as a reference to a subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

Reference in enactment to subsections, etc.

APPENDIX II

Reference to
regulations

(4) A reference in an enactment to regulations shall be read as a reference to regulations made under the enactment in which the reference occurs.

Reference to
another
enactment

(5) A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment shall be read as reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law. 1967-68, c. 7, s. 34.

REPEAL AND AMENDMENT

Power of repeal
or amendment
reserved

34. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

Amendment or
repeal at same
session

(2) An Act may be amended or repealed by an Act passed in the same session of Parliament.

Amendment part
of enactment

(3) An amending enactment, as far as consistent with the tenor thereof, shall be construed as part of the enactment that it amends. 1967-68, c. 7, s. 35.

Effect of repeal

35. Where an enactment is repealed in whole or in part, the repeal does not

- (a) revive any enactment or anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;
- (d) affect any offence committed against or a violation of the provisions of the enactment so repealed, or any penalty, forfeiture or punishment incurred under the enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and an investigation, legal proceeding or remedy as described in paragraph (e) may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed as if the enactment had not been so repealed. 1967-68, c. 7, s.36.

Repeal and
substitution

36. Where an enactment (in this section called the “former enactment”) is repealed and another enactment (in this section called the “new enactment”) is substituted therefor,

- (a) every person acting under the former enactment shall continue to act, as if appointed under the new enactment, until another is appointed in his stead;
- (b) every bond and security given by a person appointed under the former enactment remains in force, and all books, papers, forms and things made or used under the former enactment shall

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continue to be used as before the repeal so far as they are consistent with the new enactment;

(c) every proceeding taken under the former enactment shall be taken up and continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment;

(d) the procedure established by the new enactment shall be followed as far as it can be adapted thereto in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights, existing or accruing under the former enactment or in a proceeding in relation to matters that have happened before the repeal;

(e) when any penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly;

(f) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment;

(g) all regulations made under the repealed enactment remain in force and shall be deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their stead; and

(h) any reference in an unrepealed enactment to the former enactment shall, as regards a subsequent transaction, matter or thing, be read and construed as a reference to the provisions of the new enactment relating to the same subject-matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be read as unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment. 1967-68, c. 7, s. 37.

37. (1) The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that such enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been previously in force.

Repeal does not imply enactment was in force

(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under such enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

Amendment does not imply change in law

(3) The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

Repeal does not declare previous law

APPENDIX II

Judicial
construction not
adopted

(4) A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language. 1967-68, c. 7, s. 38.

DEMISE OF CROWN

Effect of demise

38. (1) Where there is a demise of the Crown,
(a) the demise does not affect the holding of any office under the Crown in right of Canada; and
(b) it is not necessary by reason of such demise that the holder of any such office again be appointed thereto or that, having taken an oath of office or allegiance before such demise, he again take such oath.

Continuation of
proceedings

(2) No writ, action or other process or proceeding, civil or criminal, in or issuing out of any court established by an Act of the Parliament of Canada is, by reason of a demise of the Crown, determined, abated, discontinued or affected, but every such writ, action, process or proceeding remains in full force and may be enforced, carried on or otherwise proceeded with or completed as though there had been no such demise. 1967-68, c. 7, s. 39.

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Essential
elements

Australia
Barbados
Botswana
Canada
Cyprus
Gambia
Ghana
Guyana
India
Jamaica
Kenya
Lesotho
Malawi
Malaysia
Malta
New Zealand
Nigeria
Sierra Leone
Singapore
Tanzania
Trinidad and Tobago
Uganda
United Kingdom
Western Samoa
Zambia
Bangladesh
Fiji
Mauritius
Nauru
Sri Lanka
Swaziland
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